SUPREME COURT, U. S.

JOHN F. DAVIS, C

APPENDIX

Volume I

In the Supreme Court of the United States

OCTOBER TERM, A.D. 1967.

No. 510

MARVIN L. PICKERING,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Defendant-Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

FILED AUGUST 17, 1967
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IN THE

Supreme Court of Illinois

SEPTEMBER TERM, A.D., 1966

MARVIN L. PICKERING, Plaintiff-Appellant, vs. BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS, Defendant-Appellee.	Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois. — Honorable Michael A. Orenic, Presiding.

ABSTRACT OF RECORD

Rec. Page

1 Placita.

3 Verified Complaint for Review of Final Administrative Decision filed January 4, 1965:

Now comes the plaintiff, Marvin L. Pickering, by John Ligtenberg, his attorney, and complains of the Board of Education of Township High School District No. 205, Will County, Illinois, as follows:

1. This action is brought under the provisions of the Administrative Review Act of the State of Illinois.

2. The plaintiff is a regularly employed teacher in and for Township High School District No. 205, Will County, Illinois, at the school known as Lockport East High School located in Lockport, Will County, Illinois, and has been so employed from on or about September 1, 1959 and ever since that time, and prior to the commencement of this suit and before the happening of the events herein complained of had entered upon contractual continued service under the provisions of Article 24 of the School Code and had served as a probationary teacher in said district for a probationary period of two consecutive school terms, that is to say, for the school terms 1959-1960 and 1960-1961, and has continued to be employed in said School District as a full time teacher up to December 30, 1964, and but for the event herein complained of would still be so employed.

The plaintiff, Marvin L. Pickering, now holds a Teaching Certificate issued by the Superintendent of Public Instruction of the State of Illinois, which certificate has been registered in the Office of the County Superintendent of Schools of Will County, Illinois, and has held a teaching certificate for all the years of his employment as a teacher in and for said school district, and is qualified to teach subjects in the High Schools in School District No. 205, and during this service, has taught science in the 9th and 10th grades of said schools.

3. The defendant, Board of Education of High School District Number 205, Will County, Illinois, is a body politic and corporate created and existing under and by virtue of the School Code of the State of Illinois, approved March 18, 1961, and all acts amendatory thereof and supplemental thereto, and

derives its powers under and by virtue of the School Code of the State of Illinois.

4. The plaintiff has held a contract to teach for all the years of his employment, and held a contract to teach for the last year of his probationary period of teaching as hereinabove set forth and held contracts to teach and has taught under the provisions of the School Code of the State of Illinois, including Article 24 thereof, known as the Teacher Tenure Law, for the period subsequent to his probationary period of service, and held such contracts to teach and taught under the provisions of the School Code of Illinois, including Article 24 thereof, known as the Teacher Tenure Law for the school year 1964-1965, up to and including December 30, 1964.

5. The plaintiff is a citizen of the United States of America, is over 21 years of age and has not attained the age of 65 years.

6. The final administrative decision which the plaintiff seeks to have reviewed is contained in or consists of a resolution adopted by the defendant, Board of Education of High School District Number 205, Will County, Illinois, hereinafter more particularly described.

7. On or about October 9, 1964, there was served upon the plaintiff a purported "Notice of Dismissal of Teacher." A true copy thereof is attached hereto and made a part hereof as Exhibit "A". A copy of the publication referred to in Exhibit "A" is attached hereto and made a part hereof as Exhibit "A-1."

8. Within ten days after the receipt of said "Notice of Dismissal of Teacher" the plaintiff served upon the defendant herein a Request for Public Hear-

ing and a Demand for Bill of Particulars, which Request for Public Hearing and Demand for Bill of Particulars is in writing. A true copy thereof is attached hereto and made a part hereof as Exhibit "B".

9. On or about October 31, 1964, the defendant served on the plaintiff a certain Answer to Demand for Further Bill of Particulars. A true copy thereof is attached hereto and made a part hereof as Exhibit "C".

10. Afterward, the plaintiff served on defendant a further Demand for Bill of Particulars. A true copy thereof is attached hereto and made a part hereof as Exhibit "D".

11. The defendant then served on plaintiff an Answer to Bill of Particulars. A true copy thereof is attached hereto and made a part hereof as Exhibit "E".

12. Thereafter the plaintiff was notified in writing that pursuant to his written demand a public hearing on the charges against him would be held at the Lockport Central High School, Lockport, Illinois, on the 19th day of November, 1964, commencing at the hour of 10:00 a. m. A true copy of said notice is attached hereto and made a part hereof as Exhibit "F".

13. Pursuant to the foregoing notice a hearing was held on said charges against the plaintiff commencing on November 19, 1964. The hearing was completed on November 20, 1964. At the conclusion of the hearing the Board of Education adopted a motion setting December 2, 1964, as the day on which it would meet and make its decision. The Board of

Education did meet on December 2, 1964, and did on that day adopt a Resolution confirming the dismissal of the plaintiff. A true copy of said resolution is attached hereto and made a part hereof as Exhibit "G". Said Exhibit "G" is the Final Administrative Decision which the plaintiff seeks to have reversed in this proceeding.

7 14. The plaintiff and the defendant are the only parties to the decision complained of.

15. The plaintiff demands that the defendant, Board of Education of High School District Number 205, Will County, Illinois, file as its Answer herein, the entire stenographic record of the hearing held on the charges against the plaintiff above described, duly certifying the same as the true and correct stenographic record of said hearing. Plaintiff further demands that the defendant include in its Answer all the Notices served on the plaintiff, the Demand of the plaintiff for a Public Hearing and the respective Demands for a Bill of Particulars, the bill of particulars filed, and all exhibits introduced at said hearing, and all its subsequent proceedings pertaining thereto, all in accordance with the terms and provisions of the Administrative Review Act of Illinois.

16. The plaintiff seeks a review of the purported decision of the defendant made on December 2, 1964, dismissing the plaintiff as a teacher in said school district, effective on December 30, 1964.

17. The final administrative decision, hereby sought to be reviewed, was and is unlawful and illegal and is null and void and of no force and effect, and the defendant erred in making said decision and erred in removing and dismissing the plaintiff as a

teacher in and for said school district and said decision should be reversed for the following reasons:

(a) The final administrative decision is contrary to law.

(b) Said decision is not supported by substantial evidence, and is against the weight of the evi-
8 dence; the evidence does not prove the truth of the charges made against the plaintiff.

(c) The record of the proceedings does not show that it is for the best interests of the school that the plaintiff be dismissed, and fails to support the opinion of the Board that the best interests of the schools require the dismissal of plaintiff.

(d) It does not appear from any of the charges made against plaintiff that they are not remediable, and it does not appear that the teacher was ever given any warning in writing, stating specifically the causes which, if not removed, might result in charges for his dismissal.

(e) It appears affirmatively from each of the said charges that they are remediable, and the record of proceedings conclusively shows that they are remediable and that plaintiff was never given any warning in writing concerning any of them.

(f) None of the charges made against the plaintiff by the defendant sets forth a lawful cause for his dismissal. The dismissal of the plaintiff for the reasons set forth in the charges against the plaintiff is not warranted under the School Code of Illinois. The dismissal of plaintiff on the basis of said charges is in violation of the Teacher Tenure Law of Illinois.

(g) Said charges are too vague, uncertain, ambiguous and indefinite to notify plaintiff of the nature of the complaint against him and to enable him to prepare his defense. They are conclusions unsupported by allegations of fact.

(h) The final administrative decision, hereby sought to be reviewed, fails to show that said charges or any of them were supported by evidence introduced at the hearing.

(i) It appears from said charges, and said final administrative decision, that the defendant acted arbitrarily, capriciously and from reasons of bias or personal hatred, and without warrant of law.

(j) The record of the proceedings does not contain facts justifying the dismissal of the plaintiff and said record does not justify the termination of the contractual continued service status of the plaintiff as a teacher in and for said school district.

(k) The plaintiff was damaged in his personal and property rights, and his professional life was injured by the arbitrary, unreasonable, capricious and discriminatory acts of the defendant Board of Education.

(l) The plaintiff was deprived of his property and personal rights without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States of America and Section 2 of Article II of the Constitution of the State of Illinois.

(m) The plaintiff was deprived of his right to freedom of the press and of speech in violation of the First Amendment of the Constitution of the

United States of America and Section 4 of Article II of the Constitution of Illinois.

18. It does not appear from the evidence that the matters charged against the plaintiff in any manner fomented controversy, conflict or dissension among the teachers, administrators, board members or residents of the school district, or that the welfare of the schools was in any manner jeopardized or disrupted thereby, or that any person was damaged thereby professionally or otherwise.

19. It does not appear from the evidence that plaintiff published or caused to be published anything that involved or damaged the professional or personal reputation of any school administrator or board member of the defendant school district or involved or damaged the reputation of any of the schools of said district.

20. It does not appear from the evidence that plaintiff published or caused to be published anything that disrupted the discipline of the teachers or the morale or harmony among the teachers, administrators, board of education or residents of the district.

21. It appears from the evidence that the plaintiff was warranted in making or causing to be made the publication complained of in the charges against him, and that said publication could not be made the basis of charges against him.

WHEREFORE, plaintiff prays as follows:

1. That the said final administrative decision and the record supporting same be judicially reviewed.

2. That the decision of the Board of Education of High School District Number 205, Will County, Illinois, dismissing and removing the plaintiff as a teach-

er in and for said school district be reversed and set aside and that said proceedings be declared null and void and of no force and effect.

11 3. That the plaintiff be reinstated in his position as a teacher in and for the defendant school district and that he be paid his salary for all of the time that he has been unlawfully withheld from his position as such teacher, and that he be reimbursed for his costs and attorney's fees incurred in said hearing before the board and in this complaint for administrative review and all subsequent proceedings.

4. That the plaintiff have such other and further relief as justice may require.

/s/ Marvin L. Pickering.

12 PLAINTIFF'S EXHIBIT "A"
ATTACHED TO COMPLAINT.
NOTICE OF DISMISSAL OF TEACHER.

To: Marvin L. Pickering:

Please take notice that you, as a teacher now employed in the schools of Township High School District Number 205, Will County, Illinois, are hereby dismissed as such teacher for the following charges, causes, reasons and following bill of particulars:

That you did write a certain letter to the editor of The Lockport Herald, a newspaper published in and having a general circulation in said District, and that you caused said letter to be published in said newspaper in its edition of Thursday, September 24, 1964 on Page 4 thereof, which said letter contained many untrue and false statements and comments which directly and by innuendo and

without justification questioned and impugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education and the School Administrators of this District in carrying out their official duties, which said statements, comments and questions contained in said letter written and caused to be published by you seriously involved and damaged the professional reputations of said Administrators and Board and the reputation of the schools of this District and are and will be highly disruptive to the discipline of the teachers and the morale and harmony among Teachers, administrators, Board of Education and residents of this District, and which said statements and comments will tend to foment controversy, conflict and dissension among them and jeopardize the welfare of the schools of this District.

Further take notice that if you desire a hearing upon such charges, causes and reasons, you must, within ten (10) days after the service of this notice upon you, request such hearing in writing and file such request with the Board of Education as required by the School Code. If such hearing is requested, such dismissal will not became effective until approved by a majority vote of all members of the Board of Edu-
13 cation upon such charges and after a hearing thereof by the Board of Education.

Dated this 8th day of October, 1964.

Township High School District
Number 205, Will County, Illinois.

By /s/ Willard A. Anderson
President, Board of Education.

and

By /s/ Carroll H. Ward,
Secretary, Board of Education.

15 PLAINTIFF'S EXHIBIT "A-1"
TO COMPLAINT
LETTERS TO THE EDITOR
**** Graphic Newspapers, Inc.
Thursday, September 24, 1964 Page 4

Dear Editor:

I enjoyed reading the back issues of your paper which you loaned to me. Perhaps others would enjoy reading them in order to see just how far the two new high schools have deviated from the original promises by the Board of Education. First, let me state that I am referring to the February thru November, 1961 issues of your paper, so that it can be checked.

One statement in your paper declared that swimming pools, athletic fields, and auditoriums had been left out of the program. They may have been left out but they got put back in very quickly because Lockport West has both an auditorium and athletic field. In fact, Lockport West has a better athletic field than Lockport Central. It has a track that isn't quite regulation distance even though the board spent a few thousand dollars on it. Whose fault is that? Oh; I forgot, it wasn't supposed to be there in the first place. It must have fallen out of the sky. Such responsibility has been touched on in other letters but it seems one just can't help noticing it. I am not saying the school shouldn't have these facilities, because I think they should, but promises are promises, or are they?

Since there seems to be a problem getting all the facts to the voter on the twice defeated bond issue, many letters have been written to this paper and

probably more will follow, I feel I must say something about the letters and their writers. Many of these letters did not give the whole story. Letters by your Board and Administration have stated that teachers' salaries total $1,297,746 for one year. Now that must have been the total payroll, otherwise the teachers would be getting $10,000 a year. I teach at the high school and I know this just isn't the case. However, this shows their "stop at nothing" attitude. To illustrate further, do you know that the superintendent told the teachers, and I quote, "Any teacher that opposes the referendum should be prepared for the consequences". I think this gets at the reason we have problems passing bond issues. Threats take something away; these are insults to voters in a free society. We should try to sell a program on its merits, if it has any.

Remember those letters entitled "District 205 Teachers Speak", I think the voters should know that those letters have been written and agreed to by only five or six teachers, not 98% of the teachers in the high school. In fact, many teachers didn't even know who was writing them. Did you know that those letters had to have the approval of the superintendent before they could be put in the paper? That's the kind of totalitarianism teachers live in at the high school, and your children go to school in.

In last week's paper, the letter written by a few uninformed teachers threatened to close the school cafeteria and fire its personnel. This is ridiculous and insults the intelligence of the voter because properly managed school cafeterias do not cost the school district any money. If the cafeteria is losing money, then the board should not be packing free lunches

for athletes on days of athletic contests. Whatever the case, the taxpayer's child should only have to pay about 30c for his lunch instead of 35c to pay for free lunches for the athletes.

In a reply to this letter your Board of Administration will probably state that these lunches are paid for from receipts from the games. But $20,000 in receipts does'nt pay for the $200,000 a year they have been spending on varsity sports while neglecting the wants of teachers.

You see we don't need an increase in the transportation tax unless the voters want to keep paying $50,000 or more a year to transport athletes home after practice and to away games, etc. Rest of the $200,000 is made up in coaches' salaries, athletic directors' salaries, baseball pitching machines, sodded football fields, and thousands of dollars for other sports equipment.

These things are all right, provided we have enough money for them. To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse.

If these things aren't enough for you, look at East High. No doors on many of the classrooms, a plant room without any sunlight, no water in a first aid treatment room, are just a few of many things. The taxpayers were really taken to the cleaners. A part of the sidewalk in front of the building has already collapsed. Maybe Mr. Hess would be interested to know that we need blinds on the windows in that building also.

Once again, the board must have forgotten they were going to spend $3,200,000 on the West building and $2,300,000 on the East building.

As I see it, the bond issue is a fight between the Board of Education that is trying to push tax-supported athletics down our throats with education, and a public that has mixed emotions about both of these items because they feel they are already paying enough taxes, and simply don't know whom to trust with any more tax money.

I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration. Do you really know what goes on behind those stone walls at the high school?

Respectfully,

Marvin L. Pickering.

16 Plaintiff's Exhibit "B" Request for Public Hearing and Demand for Bill of Particulars (not abstracted).

17 Plaintiff's Exhibit "C" to Complaint "Answer to Demand for Bill of Particulars" (not abstracted).

18 Plaintiff's Exhibit "D" to Complaint, "Demand for Bill of Particulars":

Marvin L. Pickering, has heretofore demanded a bill of particulars on the charges made against him by the Board of Education of Township High School District No. 205, Will County, Illinois.

In answer dated October 30, 1964, the Board of Education has indicated that it would furnish further particulars if a more specific demand were made. The demand of the teacher, Marvin L. Pickering, for a bill of particulars includes, without limitation, the following:

1. State specifically what statements and comments in the publication complained of are untrue or false.

19 2. State specifically what statements and comments in the publication complained of directly ques-

tioned the motives, honesty, integrity, truthfulness, responsibility or confidence of the Board of Education, or the School Administrators of said School District in carrying out their official duties.

3. State specifically what statements or comments in said publication contain innuendoes to the effect stated in paragraph 2 hereof.

4. State specifically what member or members of the Board of Education are or may be injured by the said publication in any of the respects mentioned in the notice of dismissal.

5. State specifically the names of the school administrators of said school district concerning whom any untrue or false statements are made in said publication and what statements therein apply to each person so named.

6. State specifically in what manner, if any, statements or comments in said letter in any way or manner involved or damaged the professional reputations of any of said administrators or the board of education or any of the members thereof. Please state the names of the administrators and members of the board, if any, so injured or damaged.

7. State specifically what statements and comments have in any way or manner involved or damaged the reputation of said school district.

8. State specifically what statements or comments in said publication are disruptive of the discipline of the teachers of said school district, and what disruptions have occurred.

9. State specifically what statements or comments in said publication are or will be disruptive of the

morals and harmony among the teachers, administrators, board of education or residents of said school district and what disruptions have occurred.

10. State specifically the names of said teachers, administrators, board of education and residents.

11. State specifically what statements and comments in said publication have tended or will tend to foment controversy, conflict, or dissention among said teachers, administrators, the Board of Education or any member or members thereof, or residents of said school district.

12. State specifically what statements or comments in said publication have or will hereafter jeopardize the welfare of the schools of the said school district.

13. State specifically what statements or comments in said publication, if any, are deemed by you to have been made without justification.

14. State specifically what statements or comments contained in said publication contained innuendoes resulting in the damage complained of in the notice of dismissal.

Marvin L. Pickering,

By /s/ John Ligtenberg
John Ligtenberg.

21 PLAINTIFF'S EXHIBIT "E"
TO COMPLAINT.

ANSWER TO BILL OF PARTICULARS.

Now Comes the Board of Education of Township High School District No. 205, Will County, Illinois,

by Krusemark and Bertani, its attorneys, through Louis R. Bertani, and for answer to the bill of particulars heretofore filed by Marvin L. Pickering, says:

1. State specifically what statements and comments in the publication complained of are true or false:

A. The source of the majority of the allegations contained in the letter is not the February through November, 1961, issues of the Lockport Herald as indicated in paragraph 1 of Mr. Pickering's letter.

B. The first sentence of Mr. Pickering's letter states that others would enjoy reading the back issues of the Lockport Herald to see just how far the two new high schools have deviated from the original promises of the Board of Education where in fact, there has not been a substantial deviation.

22 C. In paragraph 2 of Mr. Pickering's letter he states that athletic fields and auditoriums were originally left out of the program. This is not true.

D. The athletic field at Lockport Central is regulation distance.

E. As to teachers' salaries stated in paragraph 3 of Mr. Pickering's letter we know of no letter written by either the board or administration that state teachers' salaries for the figure as indicated.

F. The superintendent has never told the teachers the following: "Any teachers that oppose the referendum should be prepared for the consequences."

G. As to paragraph 4 of Mr. Pickering's letter dealing with the letter entitled: "District 205 Teachers Speak," it is not true that 98% of the school teachers are supposed to have agreed to this letter.

H. Letters do not have to have the approval of the superintendent before they can be put in the paper.

I. The cafeteria is not losing money because of packing free lunches for athletes on days of athletic contests.

J. Lunch prices are not 35c rather than 30c because of packing of free lunches to athletes.

K. The school board is not spending $200,000.00 a year on varsity sports and is not neglecting the wants of teachers.

L. As to paragraph 5 of Mr. Pickering's letter, the cost of transporting athletes home after practice and to away games and etc. is not $50,000.00.

23 M. As to paragraph 6 of Mr. Pickering's letter, football fields have not been sodded on borrowed money.

N. Teachers' salaries have always been paid.

O. The freedom of a teacher to sign a letter as a teacher and have the same published has not been taken away from Mr. Pickering or any teacher at Township High School District No. 205 by this administration.

P. The bond issue has not been twice defeated.

2. State specifically what statements and comments in the publication complained of directly question the motives, honesty, integrity, truthfulness, responsibility or confidence of the Board of Education or the school administrators of said school district in carrying out their official duties.

A. Paragraph 1 charges that the Board of Education have deviated extremely from the original plans of the two new high schools.

B. Paragraph 2 by the use of the phrase: "Promises are promises or are they?" Mr. Pickering directly questions all of the items specified in paragraph 2 of the Bill of Particulars.

C. Paragraph 3 refers to the "Stop at Nothing" attitude of the board.

D. The statement that the superintendent told the teachers "any teachers that oppose the referendum should be prepared for the consequences."

E. The statement, "That's the kind of totalitarianism teachers live in at the high school and their children go to school in."

24 F. The statement that the board, by giving free lunches to athletes is causing students to pay an additional 5¢ for their cafeteria meal.

G. The statement that $50,000.00 or more is being paid to transport athletes.

H. The statement that teachers salaries have not been paid.

I. The statement that the taxpayers were really taken to the cleaners.

J. The statement that the Board of Education is trying to push tax supported athletics down our throats.

K. The statement that the public doesn's know who to trust with any more money.

L. The statement that the freedom of signing a letter as a teacher has been taken away by the administration.

M. The question, "do you really know what goes on behind those stone walls at the high school?"

3. State specifically what statements or comments in said publication contain innuendoes to the effect stated in paragraph 2 hereof.

A. To see just how far the two new high schools have deviated from the original promises by the Board of Education.

B. In regard to the allegations that the track is not of regulation distance, the question is then asked: "Whose fault is that?" "Oh, I forgot it wasn't supposed to be there in the first place." "It must have fallen out of the sky."

C. "Promises are promises or are they?"

D. "Stop at Nothing" attitude.

E. "Threats, take away something, these are insults to voters in a free society. We should try to sell a program on its merits, if it has any."

F. "The taxpayers were really taken to the cleaners."

4. State specifically what member or members of the Board of Education are or may be injured by the said publication in any of the respects mentioned in the notice of dismissal.

The entire make-up of the present board and all former members of the board who were members since 1961.

5. State specifically the names of the school administrators of said school district concerning whom any untrue or false statements are made in said publication and what statements therein apply to each person so named.

Dr. William H. Blatnik.

A. "Any teachers that oppose the referendum should be prepared for the consequences."

B. Did you know, that those letters had to have the approval of the superintendent before they could be put in the paper.

C. To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse.

D. The taxpayers were really taken to the cleaners.

E. I must sign this letter as a citizen and taxpayer and voter, not as a teacher, since that freedom has been taken away from the teachers by the administration.

26 6. State specifically in what manner, if any, statements or comments in said letter in any way or manner involved or damaged the professional reputations of any of said administrators or the board of education or any of the members thereof. Please state the names of the administrators and members of the board, if any, so injured or damaged.

The entire letter with its previously specifically identified false statements and innuendoes would damage the professional reputation of the administrators and the members of the Board of Education. The answer to the previous questions indicate specifically the areas of the letter referred to. Statements that accuse the administration of being totalitarian and of threatening the school teachers and further of taking the public to the cleaners *per se* damage the reputation of the entire administrative staff of said school.

Statements that accuse board members of deviating substantially from promises, of implying that promises made by the board were not intended to be kept; of accusing the board of permitting the taxpayers to be taken to the cleaners; of promoting an athletic program to the detriment of the educational program; of permitting cafeteria charges to be increased to promote free lunches for athletes and the many other things refered to in the answer to the first four (4) questions *per se* damage the reputation of the entire board of education of said school district. This is true not only of the present board but the board members who have not succeeded themselves since 1961. The names and addresses as requested in this question are attached hereto and made a part hereof.

27 7. State specifically what statements and comments have in any way or manner involved or damaged the reputation of said school district.

See answer to request for bill of particulars 1, 2, 3, 4 and 6.

8. State specifically what statements or comments in said publication are disruptive of the discipline of the teachers of said school district, and what disruptions have occurred.

The charge in the notice of dismissal states in part as follows: ". . . said statements, comments and questions contained in said letter written and caused to be published by you seriously involved and damaged . . . the reputation of the schools of this district and are and will be highly disruptive to the discipline of the teachers, . . ." Statements that accuse the administration as indicated in the answer to questions 1, 2, 3, 4 and 6 of this bill of particulars would *per se*

disrupt the discipline of teachers if the maker of said statements were allowed to do so without action on the part of the board and administration.

9. State specifically what statements or comments in said publication are or will be disruptive of the morals and harmony among the teachers, administrators, board of education or residents of said school district and what disruptions have occurred.

See answer to question No. 8.

10. State specifically the names of said teachers, administrators, board of education and residents.

The entire staff of the district as well as its administration and all present board members and board members since February of 1961.

28 11. State specifically what statements and comments in said publication have tended or will tend to foment controversy, conflict, or dissention among said teachers, administrators, the board of education or any member or members thereof, or residents of said school district.

See answer to questions 1, 2, 3, 4 and 6.

12. State specifically what statements or comments in said publication have or will hereafter jeopardize the welfare of the schools of the said school district.

See answer to questions 1, 2, 3, 4 and 6.

13. State specifically what statements or comments in said publication, if any, are deemed by you to have been made without justification.

See answer to questions 1, 2, 3, 4 and 6. Summarizing, the entire letter is one series of either untruths, half truths or mis-statements. It is a conglomeration taken out of context of the original bond issue pro-

posal which provided for two two-year high schools which was defeated and the second bond issue proposal which provided for a four-year west side high school and a two-year east side high school, which second proposal was successful and the recent referendums for a tax rate increase for the educational fund and for the transportation fund.

14. State specifically what statements or comments contained in said publication contained innuendoes resulting in the damage complained of in the notice of dismissal.

See answers to questions 1, 2, 3, 4 and 6.

Board of Education,
Township High School District
No. 205,
Will County, Illinois.

By Krusemark & Bertani
/s/ Louis R. Bertani

29

Dr. William H. Blatnik 901 First Street Lockport, Illinois	Kenneth Kibler 624 Lynn Street Lockport, Illinois
Mr. Melvin Smith 833 Summit Drive Lockport, Illinois	Ernest H. Swenson, Jr. 808 Valley Lane Lockport, Illinois
Willard A. Anderson 321 E. 5th Street Lockport, Illinois	Harold M. Finley 630 E. 12th Street Lockport, Illinois
Felix Borio 2411 Wilcox Street Joliet, Illinois	Matthew Viscum 124 Nobes Avenue Lockport, Illinois
Barney N. Welter Route No. 1 Lockport, Illinois	Aldo Anzolin Parker Road Lockport, Illinois
Laurence Tendell 31 Arlington Drive Lockport, Illinois	Norman Rowley 540 East 10th Street Lockport, Illinois
William Babich 730 Green Garden Place Lockport, Illinois	Carroll H. Ward 1420 S. Hamilton Street Lockport, Illinois

30 Plaintiff's Exhibit "F" to Complaint, (not abstracted) Notice of Public Hearing.

31 PLAINTIFF'S EXHIBIT "G"
TO COMPLAINT

(Resolution Confirming Dismissal)

RESOLUTION.

Whereas, The Board of Education of Township High School District Number 205, Will County, Illi-

nois, duly passed and adopted a resolution at its regular meeting held on the 8th day of October, 1964, dismissing tenure teacher, Marvin L. Pickering, effective December 30, 1964, for the charges, causes and reasons therein set forth and found not to be remediable; and

Whereas, said teacher, Marvin L. Pickering, was personally served with notice of such charges, reasons and causes and a bill of particulars thereof on October 9, 1964; and

Whereas, said teacher, Marvin L. Pickering, duly requested a public hearing on said charges in writing within ten (10) days after the service of such notice; and

Whereas, said teacher, Marvin L. Pickering, subsequently requested a further bill of particulars of said charges which the Board of Education duly furnished him; and

Whereas, the public hearing on said charges on account of said causes and reasons was duly held on November 19th and 20th, 1964 whereat said Marvin L. Pickering appeared personally and by his attorney; and

Whereas, said public hearing was duly adjourned to December 2, 1964, at 7:30 o'clock P. M., at the Library of the Lockport Central High School, located at 12th and Jefferson Streets, Lockport, Illinois, for decision pursuant to taking matter under advisement; and

32 Whereas, the President of this Board of Education duly called a special meeting of this Board of Education pursuant to law by giving notice thereof in

writing by mail more than forty-eight (48) hours before such meeting to each board member, stating the time, place and purpose of the meeting, said special meeting having been called to be held concurrently with such adjourned public hearing for the sole purpose to consider and determine by decision the charges made and the issues raised in the aforesaid public hearing and to pass and adopt a resolution deciding said charges and issues and to take any necessary action in regard thereto; and

Whereas, this Board of Education now duly meets concurrently in adjourned session of said public hearing and in duly called special meeting to make such decision.

Now, therefore, be it and it is hereby resolved by this Board of Education of Township High School District Number 205, Will County, Illinois, as follows:

Section 1. That this Board of Education having fully considered the charges made against teacher, Marvin L. Pickering, on account of the causes and reasons for his dismissal all as set forth in said resolution passed and adopted October 8, 1964; and the proceedings had in the public hearing duly held on November 19th and 20th, 1964, at the written request of said Marvin L. Pickering, finds and decides from the sworn testimony and exhibits introduced at said public hearing that the causes and reasons for such dismissal and charges made by
33 this Board of Education against said Marvin L. Pickering on account thereof are true, fully proven and supported by the evidence and that no meritorious or sufficient defense was interposed thereto or proven by said Marvin L. Pickering.

Section 2. That this Board of Education finds and decides that said causes and reasons for dismissal and its charges proven on account of them are

not remediable and that it is in the best interests of this School District and the schools of this School District that said teacher be dismissed.

Section 3. That the action of this Board of Education in its said resolution of October 8, 1964, dismissing said Marvin L. Pickering as a teacher of this School District effective December 30, 1964, be and the same is hereby approved and he is hereby dismissed from his employment by this School District as such teacher effective December 30, 1964.

Section 4. That a copy of this resolution be served upon said Marvin L. Pickering as notice of the decision of this Board of Education.

Passed and adopted this 2nd day of December, 1964.

/s/ Willard A. Anderson,
President, Board of Education.

Attest:

/s/ Felix L. Borio,
Secretary Pro Tempore,
Board of Education.

35 Summons in Administrative Review.

38 Motion of Board of Education, filed February 5, 1965 and heard on February 9, 1965.

Now comes the defendant, Board of Education of Township High School District Number 205, Will County, Illinois, by its attorneys, Louis R. Bertani and John Verklan, and moves to this court to strike subparagraphs (c), (d), (e), (f), (g), (i), (k), (l) and (m) of Paragraph 17 and Paragraphs 18, 19, 20 and 21 of the Complaint on the ground that the allegations or issues contained therein were not presented and raised by the plaintiff in the administrative hearing and proceeding and are therefor waived, and that if the court should deny said mo-

tion as to any of said subparagraphs and paragraphs then defendant moves the court, in the alternative, that the plaintiff make more definite and certain the following subparagraphs or paragraphs if the court should deny that they be stricken:

Paragraph 17(i). State how the defendant acted arbitrarily and capriciously and what bias or personal hatred it had for the plaintiff.

Paragraph 17 (k). State how the plaintiff was damaged in his personal and property rights, and his professional life was injured.

39 Paragraph 17(l). State specifically how the plaintiff was denied due process of law in violation of the federal and state constitutions.

Paragraph 17(m). State specifically how the plaintiff was denied freedom of speech in violation of the federal and state constitutions.

Paragraph 21. State specifically how the plaintiff was warranted in making or causing the publication complained of in the charges against him.

And in support of said motion, defendant files the original record of the proceedings under review and further requests that it stand as the answer to those paragraphs not requested to be stricken, and that if this motion be denied as to any paragraphs, that it stand as the answer to the said paragraphs.

Board of Education of
Township High School Number 205,
Will County, Illinois, Defendant,

By /s/ Louis R. Bertani,

/s/ John Verklan,

Its Attorneys.

46 Order of February 19, 1965 as follows:

This matter coming on to be heard upon the motion of the defendant to strike certain sub-paragraphs and paragraphs of plaintiff's complaint and in the alternative, to make some of said paragraphs more definite and certain, defendant appearing in court by and through its attorneys, John Verklan and Louis R. Bertani and plaintiff appearing in person and through his attorney, John Ligtenberg and the court after hearing the arguments of counsel and being fully advised in the premises, IT IS HEREBY ORDERED as follows:

1. Upon defendant's motion, its motion to strike sub-pafagraphs c, d, e and f of paragraph 17 and paragraphs 18, 19 and 20 of plaintiff's complaint be and the same is hereby withdrawn.

2. By agreement of parties sub-paragraph g of paragraph 17 of plaintiff's complaint is stricken.

3. Defendant's motion to strike sub-paragraph 17 of plaintiff's complaint is granted and said sub-paragraph k be and the same is hereby stricken from plaintiff's complaint.

4. It is ordered by the Court that within twenty (20) days the plaintiff make more definite sub-paragraphs i and l of paragraph 17 of plaintiff's complaint and further make more definite paragraph 21 of plaintiff's complaint.

47 5. Defendant's motion to strike sub-paragraph m of paragraph 17 of plaintiff's complaint and in the alternative, to make said sub-paragraph more definite is denied.

6. Defendant ordered to plead or otherwise answer to plaintiff's complaint, as amended, within ten

(10) days after the expiration of the twenty (20) days heretofore granted to plaintiff.

ENTER:

/s/ Michael A. Orenic,
Judge.

49 Plaintiff's Statement Making More Definite Certain Allegations of the Complaint, filed March 11, 1965.

Now comes the plaintiff, pursuant to a court order entered as of February 19, 1965, and makes more definite certain allegations of the complaint hereinafter mentioned.

Paragraph 17(i)

It appears from said charges, and said administrative decision, that the defendant acted arbitrarily, capriciously and from reasons of bias or personal hatred and without warrant of law.

SPECIFICATION

1. This allegation is limited to what appears in (a) the charges and (b) the board decision.

50 2. It is clear that the allegations in the charges (see Plaintiff's Exhibit "A") are personal reactions to the letter written by plaintiff.

a. The defendant charged that the publication damaged certain persons and was injurious to the schools of the district.

b. The decision finds that the charges were proved. However, no evidence of the alleged damage was introduced at the hearing and none is found in the record of the hearing.

c. It follows that these charges were made capriciously, or that decision was made capriciously, or both.

d. If the charges or the decision (or both) are made capriciously, it is inferrable that they were made in anger or hatred and from reasons of bias.

3. It is not alleged in the charges that the causes or reasons for dismissal are not remediable. Without any bias in the charges, the decision finds that said causes and reasons are not remediable. The board introduced no evidence on the issue of remediability. Thus this part of the decision is capricious for two reasons. The findings that the board may make are limited (1) to the charges and (2) to the charges supported by substantial evidence; and here there was neither charge or evidence.

51 4. Since the remedial warning provided by statute is jurisdictional, and no warning was given the defendant acted arbitrarily and without warrant of law.

Paragraph 17(1)

It appears from said charges, and said administrative decision, that the defendant acted arbitrarily, capriciously and from reason of bias or personal hatred and without warrant of law.

SPECIFICATION

1. The Teacher Tenure Law states that the plaintiff may only be deprived of his contractual rights (continued contractual service) by the procedure provided by law. This is a substantial right (Donahoo *vs.* Board of Education, 413 Ill. 422). The procedural

and, consequently, "due process" rights of the plaintiff were violated at least in the following respects.

a. The specification made above with respect to paragraph 17(i).

b. The failure to give the jurisdictional remedial notice.

c. The fact that findings were made against plaintiff that were not based on the charges.

d. The fact that findings were made against plaintiff that were not supported by substantial evidence.

2. The plaintiff was deprived of his salary (property) and his personal rights (to follow his chosen profession) by this denial of "due process."

52 3. It is not alleged in the charges that the best interests of the schools required that the plaintiff be dismissed and no evidence was introduced on the point. Such evidence would have to show that the schools were in some way damaged. Without such charges and evidence, there could be no basis for the specific finding in the decision that the best interests of the schools required that plaintiff be dismissed.

4. There is no presumption that the charges are true.

Paragraph 21.

It appears from the evidence that the plaintiff was warranted in making or causing to be made the publication complained of in the charges against him, and that said publication could not be made the basis of charges against him.

SPECIFICATION

1. It appears from the evidence that the statements in the disputed letter were based on fact (except for minor variations) and that there were substantial reasons for believing that these statements were true.

2. The right of free speech guaranteed by the state and federal constitutions, in the absence of a showing of clear and present danger, is not limited to the right to say and publish only what is known to be true or what the speaker can prove to be true.

53 a. No clear and present danger was alleged in the charges or shown in the evidence or found in the decision.

b. No damage was shown in the evidence or found in the decision.

(s) Marvin L. Pickering.

65 Oral Argument.

68 OPINION OF THE COURT FILED MARCH 2, 1966.

After public hearing, dismissal of tenure teacher Marvin L. Pickering was approved and confirmed by Board Resolution finding the charges proved, not remedial, and the dismissal in the best interests of the school.

On administrative review, the court will set aside the final administrative action if the action is without substantial foundation in the record or is manifestly against the weight of the evidence. The best interest of the school is the guiding star of the board and the interference of the court is justified only where a board acted capriciously, maliciously and arbitrarily.

In this case, I find the action of the board is supported by substantial evidence and is not capricious, malicious or arbitrary.

The proper and efficient education of children is a vital and important function of state government. The
69 state has a real concern in the integrity of the school, and the legislature may specify the conditions and reasons for dismissal of the teacher. The calling of teacher is so intimate, the duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that the legislature cannot enumerate all such possible grounds. Therefore, the legislative standard in the statute that the board has the power to dismiss any teacher "whenever, in its opinion, the interests of the schools require it" is constitutionally sufficient. It is not a standard so vague and indefinite as to be a denial of due process.

That the freedom of speech is a highly protected right is not denied; the judiciary has been zealous in protecting the rights of free speech, press and assembly. Freedom of speech may be limited only for strong and weighty reasons. The public interest to be protected must be of such importance that it overrides the right of free speech.

The constitutional question squarely presented in this case is whether or not there is any public interest to be protected which is so important that it overrides Pickering's freedom of speech. I answer yes. The state has the right and duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society. By statute, the legislature empowered the board to dismiss the teachers when, in its opinion,

the interests of the school require it. The interests of the school is patently an overriding public interest.

70 Pickering's conduct was adverse to the interests of the school. The board decided that the interests of the school required his dismissal. Freedom of speech does not protect the job of an employee whose conduct is against the interests of his boss.

It is the judgment of this Court that the final administrative decision of the Board of Education be affirmed.

Defendant's attorneys are directed to prepare formal order and present same to the Court for signature.

Michael A. Orenic,
Circuit Judge.

73 ORDER ENTERED MARCH 25, 1966.

Upon due notice to plaintiff and defendant this cause comes on for hearing upon the complaint for administrative review of plaintiff, Marvin L. Pickering, and the answer of the defendant, Board of Education of Township High School District Number 205, Will County, Illinois, consisting of the original record of the proceedings had before it under review, and the Court having reviewed and considered said complaint; said record of proceedings had before this Board of Education filed herein; the written briefs and arguments of said parties and the oral arguments of counsel, and the Court having taken this cause and the aforesaid matters under advisement and having duly considered the same and now being fully advised in the premises finds that it has jurisdiction of the subject matter of this cause and parties thereto and that

the final administrative decision of the Board of Education of Township High School District Number 205, Will County, Illinois, of December 2, 1964, dismissing plaintiff from employment by said District as a teacher, and constituting and being a part of said record of proceedings filed herein, is supported by substantial evidence, and the law is not capricious, malicious or arbitrary; is correct and should be affirmed.

It is, therefore, ordered, adjudged and decreed by the Court that the final administrative decision of December 2, 1964, rendered by the Board of Education of Township High School District Number 205, Will
74 County, Illinois, constituting and being a part of the original record of proceedings filed in this cause by said Board of Education, be and the same is hereby affirmed.

Dated this 25 day of March, 1966.

ENTER:

/s/ Michael A. Orenic,
Judge.

78 Plaintiff's Notice of Appeal and proof of service filed April 22, 1966:

TO—Mr. Louis R. Bertani
Krusemark & Bertani
68 N. Chicago Street
Joliet, Illinois

Mr. John Verklan
Barnes & Verklan
68 N. Chicago Street
Joliet, Illinois

Attorney for Defendant

Board of Education of Township
High School District Number 205
Will County, Illinois

APPEAL TO THE SUPREME COURT OF ILLINOIS

Please take notice that Marvin L. Pickering, plaintiff in the above entitled cause, hereby appeals to the Supreme Court of Illinois from the "Order" entered by the Hon. Michael A. Orenic, Judge of the Circuit Court of Will County, on March 25, 1966, which said "Order" was based upon the "Opinion of the Court" entered by the same Judge Michael A. Orenic on March 2, 1966, which said "Order" and "Opinion of the Court" in favor of defendant, Board of Education of Township High School District 205 and against the above named plaintiff upholding the dismissal of said plaintiff by said defendant contained certain erroneous findings and conclusions.

Plaintiff prays that said "Order" entered on March 25, 1966 and "Opinion of the Court" entered on March 2, 1966, upon which said "Order" was based, be reversed by the Supreme Court.

Marvin L. Pickering, Plaintiff

By: Ligtenberg, Geobel & De Jong
Plaintiff's Attorneys

81 Praecipe for Record filed April 29, 1966.

85 Proof of Service of Praecipe for Record filed April 29, 1966.

88 Order of June 17, 1966 allowing use of original transcript of proceedings before Board of Education in record on appeal in lieu of a copy.

(The abstract of the proceedings before the Board of Education has been set out immediately after the Certification of the record.)

89 Certificate of the Clerk of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, dated June 17, 1966.

Abstract of the Proceedings before the Board of Education.

Please note that the reference page numbers refer to the transcript and have not been renumbered in record on appeal.

1 Report of Proceedings had and testimony taken at the hearing of the above-entitled matter, before the Board of Education of Township High School District Number 205, Will County, Illinois, at Lockport Central High School, 12th and Jefferson Streets, Lockport, Illinois, commencing on Thursday, the 19th day of November, A. D. 1964, at the hour of 10:00 o'clock A. M.

3 Public hearing on the dismissal of the teacher, Marvin Pickering, called to order.

4 The entire Board was present.

Mr. Pinkering, Plaintiff herein is present and represented by John Ligtenberg, attorney at law, 134 North LaSalle Street, Chicago, Illinois.

5 Mr. Louis Bertani is present and will act as legal advisor for the Board of Education.

Mr. Ligtenberg: I move on behalf of the teacher, Marvin Pickering, that the charges made against him for his dismissal be stricken and that this hearing be ended and terminated, because these charges are insufficient to warrant the dismissal of a teacher who has tenure under the Illinois School Code.

6 I also move that there be stricken from the record the bill of particulars filed by the Board of Education pursuant to demand made upon it, because the bill of particulars also does not, when taken either

separately or with the charges, set forth charges sufficient to warrant the dismissal of a teacher having tenure under the laws of Illinois, including the School Code.

6 Mr. Bertani: I believe the charges speak for themselves and the bill of particulars speaks for itself, and that the charges are sufficient.

The motion or motions of counsel for Mr. Pickering should be denied.

Mr. Anderson: The motion will be denied.

7 Mr. Ligtenberg: I waive the reading of the formal charges. I assume that they will be made part of the record, however, of this hearing.

8 ANN L. KARKUT, called as a witness by the Board of Education, the Defendant, having been sworn, testified:

Direct Examination.

My name is Ann L. Karkut, Route 2, Gauger Road,
9 Lockport, Illinois. I have been editor of the Lockport Herald for over a year, and was editor on September 24th, 1964. I was subpoenaed as a witness. I brought with me a letter from Marvin L. Pickering to the Lockport Herald.

10 (The document was marked Board Exhibit No. 1).

11 Mr. Pickering, whom I had known previously, handed me that letter at my home on September 22nd, 1964.

12 He said he would like to have it published in the Lockport Herald.

13 I have no knowledge of a requirement that school teachers of District 205 first have the approval of a member of the administrative staff of that district before their letters may be published.

14 I gave the letter to Mr. Charles Broderick, managing editor of the Lockport Herald.

15 (The September 24, 1964 issue of the Lockport Herald was marked Board Exhibit No. 2.)

I identify the September 24, 1964 issue of the Lockport Herald which issue contains Mr. Pickering's letter.

(Board Exhibit No. 1—the original letter—and Board Exhibit No. 2—the September 24, 1964 issue of the Lockport Herald—were admitted into evidence.) (Exhibit 1 is not abstracted. Exhibit 2 is set out in Abst. Vol. II.)

18 The Lockport Herald is mailed to subscribers and sold on newsstands in Lockport, DuPage and Homer Townships in Will County.

19 I have also brought with me the bound volume of the 1961 issues of the Lockport Herald. It consists of all of the issues during the calendar year 1961, the issues from January 1 through December 31, 1961.

(The volume was marked Board Exhibit No. 3.)

(A portion was received in evidence at page 318 of Report and is set out in Abst. Vol. II.)

20 Board Exhibit No. 4 is the May 7, 1964 edition of the Lockport Herald.

Board Exhibit No. 5 is the May 21, 1964 edition of the Lockport Herald.

21 Board Exhibit No. 6 is the July 16, 1964 edition of the Lockport Herald.

Board Exhibit No. 7 is the July 30, 1964 edition of the Lockport Herald.

Board Exhibit No. 8 is the August 13, 1964 edition of the Lockport Herald.

Board Exhibit No. 9 is the August 20, 1964 edition of the Lockport Herald.

22 Board Exhibit No. 10 is the August 27, 1964 edition of the Lockport Herald.

Board Exhibit No. 11 is the September 3, 1964 edition of the Lockport Herald.

Board Exhibit No. 12 is the September 10, 1964 edition of the Lockport Herald.

Board Exhibit No. 13 is the September 17, 1964 edition of the Lockport Herald.

Board Exhibit No. 14 is the October 1, 1964 edition of the Lockport Herald.

(Board Exhibits Nos. 4 through 14 were never offered in evidence.)

23 Mr. Ligtenberg: I have no cross examination.

(Witness excused.)

24 CHARLES BRODERICK, called as a witness by the Board of Education, the defendant, having been
25 sworn, testified:

Direct Examination.

I am Charles Broderick and live at Route 1, Lockport, Illinois. I am managing editor of The Graphic Newspapers, including the Lockport Herald, and have been in that capacity since 1962, and was operating in that capacity on September 24, 1964.

I caused Board Exhibit No. 1 to be published in the September 24, 1964 edition of the Lockport Herald.

Board Exhibit No. 1 is contained on page 4 of Board Exhibit No. 2.

We publish an annual report on distribution in October to comply with a requirement of the U. S. Post Office.

Our average per issue over 12 months is 2,943 in Lockport, Homer, DuPage Townships and in cities and communities of the surrounding area.

The September 24, 1964 issue was distributed in the normal way—mail and newsstands. It had the usual distribution amount. The average number of copies of each issue sent to term subscribers is 1,332. The average sales during 1964 to newsstands and dealers was 1,611.

Mr. Ligtenberg: I have no objection to the admission of Board Exhibit No. 14. It would make no difference to my theory of the case if a million copies had been circulated throughout the entire state of Illinois.

Mr. Broderick: We received Board Exhibit No. 1 Tuesday, September 22, 1964.

I have no knowledge that a teacher in District 205 must obtain consent of the administration of District 205 before a letter can be printed in the Lockport Herald.

Cross Examination by Mr. Ligtenberg.

If there were such a rule, our paper would not consider itself bound thereby.

(Witness excused.)

35 Mr. Ligtenberg: I will stipulate that the school district is a legally existing school district in Will County, Illinois, has existed for a long time, that these board members here present are regularly elected members of the Board of Education of this school district.

36 As to their qualification to sit in this hearing, considering their attitude toward the plaintiff, that is something I might want to go into later. But as to their legal right to sit here, I raise no question whatsoever.

36 CARROLL WARD, called as a witness by the defendant Board of Education having been sworn, testified:

Direct Examination.

37 My name is Carroll Ward, 1420 Hamilton Street, Lockport, Illinois. I have been Secretary of the Lockport High School Board of Education of District 205 for the past three years.

38 I now identify Board Exhibit No. 15 as the Board resolution of October 8, 1964 terminating the employment of Mr. Pickering. It bears the signature of the President of the Board, Willard A. Anderson; and my attest as the Secretary.

40 It was passed at a regular meeting of the Board with a quorum present. These regular meetings are held on the second Thursday of each month. All members of the Board were present and all voted aye.

43 Board Exhibit No. 15 is admitted into evidence. (Exhibit 15 is set out in Abst. Vol. II.)

48 Board Exhibit No. 16 is the notice of dismissal served on Mr. Pickering October 9, 1964 was received

in evidence. (Exhibit 16 is the same as Exhibit "A" to Complaint and is set out at Abst. 9.)

49 Board Exhibit No. 17 is a request for a public hearing from Mr. Pickering dated October 12, 1964 and was received in evidence. (Not abstracted.)

50 Board Exhibit No. 18 is in the notice of public hearing and was received in evidence. (Not abstracted.)

52 Board Exhibit No. 19 is the answer to the demand for a further bill of particulars, and was received in evidence. (Exhibit 19 is same as Exhibit "E" to Complaint and is set out at Abst. 16.)

53 Board Exhibit No. 20 is the original demand for further bill of particulars, and was received in evidence. (Exhibit 20 is same as Exhibit "D" to Complaint and is set out at Abst. 14.)

54 Board Exhibit No. 21 is the answer to Board Exhibit No. 20 with attached registered receipts showing proof of service and was received in evidence. (Not abstracted.)

55 *Cross Examination by Mr. Ligtenberg.*

Exhibit No. 15, which is the resolution of the Board of Education, was submitted to me in written form during the course of the meeting. It was handed to
56 me as Secretary by Board Member Kibler, who introduced and moved for adoption of this resolution right after an executive session of the Board.

57 I was not present during the executive session.

58 There was no motion that the Board go into executive session. The President just declared a temporary adjournment which lasted about an hour. The Board then resolved itself back into the regular Board meeting. This resolution was then offered as the next order of business.

59 It was passed by a roll call vote, every member voting aye. I recall no other business concerning Mr. Pickering at that time.

60 Our attorney prepared the resolution in its final form. He must have done this after the meeting because I don't recall if he handed it to me in final form for signature that evening, right at the meeting.

The attorney prepared the notice of dismissal.

61 I presume our attorney handed it to the sheriff to be served on Mr. Pickering.

63 After recollection, I would like to say that I could have received the resolution in final form that night, October 8th, and signed it that evening.

64 The Superintendent's agenda of the October 8th meeting, which was prepared about the 5th or 6th, contained reference that the matter of Mr. Pickering was coming up at that Board meeting. I did not personally discuss the matter prior to October 8th.

69 Teacher's Exhibits Nos. 1 and 2 were marked for identification and are copies of the agenda for the October 8th meeting of this Board of Education.

70 (Teacher's Exhibits Nos. 1 and 2 are received in evidence. Not shown here, see Abst. Vol. II.)

71 (Witness Excused.)

ERNEST O. MOORE, JR., called as a witness by the Board of Education, having been sworn, testified:

I am Ernest O. Moore, Jr., and live at R. D. 4, Lantern Lane, Joliet. I am a partner in the architec-
72 tural firm of Kruegel, Healy & Moore, and have been licensed to practice architecture in the state of Illi-

nois since October of 1953. 75 to 80 percent of my
73 work is in the design of school buildings. I have personally been involved in the designing of 80 schools.

74 We have won special awards and have a number of schools exhibited. In particular we have had the Lockport schools, in fact, exhibited at two National Educator Conventions; The West and the East Lockport Schools. We also have had others chosen for their outstanding design. I have written some articles for publication on the subject of school design.

75 I was in charge of designing Lockport East Side High School and Lockport West Side High School.

76 I was retained on the two bond issue elections. The first bond issue plan offered two freshman-sophomore school buildings with the juniors and seniors being sent to Central School. That bond issue was defeated.

The second bond issue plan consisted of two buildings, one on the west side taking students from freshman to senior year, the other on the east side was to take freshmen and sophomores with the stipulation
77 it could later expand to a four-year school. This bond issue was successful.

These proposed schools were built and are now known as West Side High School and East Side High School.

In the preliminary plans that were drawn before the bond issue was submitted to the public, the West Side High School included an auditorium, but the East Side High School did not.

78 The working drawings were taken from the preliminary drawings and the construction was in accord-

ance with the working drawings with certain minor modifications which is typical of most buildings. The basic building was built.

79 The completed West Side campus has an auditorium and the East Side campus does not.

Athletic fields were included in the preliminary plans of the West Side High School. As to the East Side High School, the plans only showed where the athletic fields would go, but were not planned for development at this time.

80 The completed West Side School has athletic fields; the completed East Side School does not.

Both the preliminary and working plans for the West Side School included a swimming pool as an alternate. It was bid on as an alternate, but was not accepted.

81 The swimming pool at the East Side School was included in the plan only as a future development; it was not even considered as an alternate and was not bid on.

Neither school has a swimming pool.

There is a regulation track at the West Side High
82 School. The statement in Board Exhibit No. 1 that the track there is not quite regulation is not true.

83 Mr. Bertani: In reference to Board Exhibit No. 1, there is a statement that the taxpayers were taken to the cleaners. In regard to that statement, have you available information as to the cost per square foot of the West Side High School?

Mr. Ligtenberg: I object to that question as having no relevance to the accusation in regard to the taxpayers.

84 Mr. Anderson: Objection overruled.

Witness: The cost per square foot on the West Side High School, of the building, was $12.33 per square foot. The cost on the East Side High School, of the building, was $12.30 per square foot.

The cost per pupil on the West is $2,100.00 per pupil, and on the East it is $2,200.00 per pupil.

At the time these two schools were being construct-
85 ed, I was supervising architect on two schools in Joliet, Joliet Township, Will County, Illinois. The average cost per square foot on those schools was $12.52.

86 There are classrooms in the East Side High School without doors on them. In the basic design there was the desire to construct a building that would have maximum flexibility and minimum cost, in both schools, and also to have a degree of supervision that might be adequate and to create an open atmosphere from the students' standpoint, to enhance the entire beauty of the building.

We achieved this by opening up several spaces from one space to the other, and one of the means was to omit doors and make wider openings between the classroom and corridor, in some places, and between two classrooms.

In order to control any annoyance by sound we introduced doors required by the fire marshal in a
87 number of strategic spots, which also helped to isolate any interference classroom-to-classroom.

This isn't particularly unusual.

They are set off by departments. The science department is shut from the corridor, but within a department it is open.

88 Both our preliminary drawings and working drawings were directed in this manner.

There is an article in the January, 1963 issue of *The Nation's Schools,* talking about the impact of modern education on schoolhouse design. There are quite a number of examples of buildings without doors to the classrooms, both elementary and high school.
89 Loft plan school—classrooms with no walls or doors—are done in Texas. There are doorless classrooms in the University of Illinois.

There is a plant room on the East Side campus that doesn't have any sunlight. We omitted the sky-
90 lights substituted fluorescent lighting to meet the budget. We were given information that the plants do not know the difference between sunlight and artificial light.

91 The first aid room is made up of an office area, and two areas for separation of the sexes; each of these rooms has a toilet adjacent to it. Water facilities
92 are included in the toilet facilities, not in the other rooms. This is how it was designed in the preliminary and working drawings and how it was constructed.

93 The summary architectural cost of the East Side High School is $2,085,206.31. Our firm was not connected with the purchase of furniture and some minor items and equipment. The architectural cost of the West Side High School is $3,365,049.69.

94 The sidewalk in front of the East Side building has collapsed, but has been repaired without cost to the Board by the contractor.

95 The sodding of the football fields was included in the working plans of the school. It was bid on out of funds from the bond issue.

96 The buildings that the Lockport District built were
97 comparable in cost to other districts and were built at a reasonable cost.

An alternate is a desirable item but one that can be
98 left out if the money is not enough to cover the total cost.

Cross Examination by Mr. Ligtenberg.

Prior to the submission of the bond issue, I submitted to the Board of Education a probable cost of
99 construction of $6 millin dollars which was revised to $5½ million.

100 The breakdown between the two buildings was $2,300,000 for the East Side and $3,200,000 for the West Side. That included architect's fees and that part
101 that we were to be responsible for like fixed equipment, but not movable equipment.

I worked on plans for the second bond issue in the
102 latter half of 1961. The bond issue included the cost of movable equipment such as desks, instruction equipment, etc., and the sodding of the football field.

103 I cannot be sure if more than one 10 by 10 square was involved in the collapse of the sidewalk.

104 The bond issue is borrowed money; the sodding of the football fields came out of the bond issue.

I acted on behalf of the Board in making preliminary designs for the first bond issue. There was quite a bit of difference between the first and second bond issue designs.

105 In the plans for the first bond issue the basic facilities in science (labs and equiment), in the shop areas, and the auditoriums are certainly minimized

over what a four-year program would have. The athletic fields of the first bond issue design would be minimum.

106 We provided sketches and square footage that would be reproduced in the publicity for the two bond issues. I might have assisted in writing the content of brochures.

107 I normally do not see the Lockport Herald; I might have seen an issue at the time of the bond issues.

In the plan submitted in the first bond issue, there were no swimming pools for either of these two schools. There is no swimming pool in either school now.

108 There were provisions for smaller auditoriums in the two-two plan, the first bond issue.

109 Large group discussion rooms were considered, as were gymnasiums of standard playing size but without the seating capacity needed for variety sports.

110 I based the per pupil cost of the two schools finally built on the estimated initial enrollments of 800 in the East Side High School and 1,300 in the West Side High School.

111 At present only West Side High School has an auditorium with a large stage and seating capacity of 1,000. Both seating and equipment was financed out of the bond issue.

112 East Side High School has two areas that can hold 150 each. The gym at East Side High could probably hold the entire student body.

113 The difference between the gyms in the East Side and West Side High Schools is that the latter has a balcony. Otherwise they are standard gyms.

Whether a track is regulation depends on the distance the runner runs and the width of the lane he runs in. The A.A.U. and the Illinois High School Association do not agree on these aspects of the track.

The circumference of the track at West Side High School is 440 yards, measured at one foot out into the track from the inside curb. It would be incorrect if the track measured 440 yards at the curb. If it did so measure, one foot out into the track from the curb would be greater than 440 yards. What makes a track regulation is where the start and stop of a race is.

I do not have the Illinois High School Athletic Association rules with me.

The West Side High School track is oval with two straightaways of the same length, one of which is extended so the 220 yard dash may be run. There is a concrete curb all around the track. Such material is regulation.

I examined the Illinois High School Athletic Association designs and rules, and consulted with the coaches of the schools of this system, Mr. Kappmeyer and Mr. Rogers, when I designed the track.

It is undoubtedly possible there could be differences of opinion with regard to the propriety of classrooms without doors. Some of my other 80 clients did not want such classrooms. I have no knowledge as to whether the teachers of this high school district were ever consulted about this matter.

The article in *The Nation's Schools* did refer to the Lockport schools which had already been constructed. The doorless rooms at the University of

Illinois are not research rooms for the purpose of finding out the best way to teach high school science.

122 Our original plan was to have a skylight in the plant room. They were taken out as an economy measure because we were going over our budget. The room now has no sunlight. East Side High School
123 is the only school of the 80 that I have had something to do with that does not have sunlight in the plant room.

124 At East Side High there is more than one room in the first aid area that could be used to administer first aid. I am not sure just what they are using which for. The outer office and the examining room do not have running water.

125 There are two additional sick rooms with a toilet and washbowl immediately adjacent, but not in the
126 treatment room itself.

I do not have knowledge of the total cost of East Side High or West Side High Schools; I have knowl-
127 edge only of what we were involved in.

128 *Redirect Examination by Mr. Bertani.*

The first aid treatment room is 12 by 12 or 12 by 15. There is no direct access from this room to the washbowl and toilet. You must enter a passageway first.

The Nation's Schools article does not refer to
129 Lockport High School. It refers to other schools.

(The document was marked, Board Exhibit No. 22).

133 As to whether or not a track is regulation— if it is a 100-yard race, whether the race is run regulation

or not depends on whether the runner has run 100 yards.

134 In the first bond issue, West Side High School was to be a two-year high school feeding juniors and seniors to Central High School.

135 For varsity sports and things of that nature it would depend upon the central school. The two-year building would have had less facilities than the four-year that was built.

$5,500,000 was sought on the second referendum.
136 It was originally planned at $6 million dollars. There was a reduction of $500,000.

137 The first bond issue was defeated and no buildings were ever built under it.

138 The buildings were built under the second bond issue. Both the East and West Side High Schools were built substantially in accordance with not only the working drawings but with the preliminary drawings that were prepared.

139 *Recross Examination by Mr. Ligtenberg.*

140 Mr. Borio: Mr. Moore, on the East Side High School gymnasium, was the seating that you were asked to provide to be provided for spectator seating or for seating of students for assemblies?

Witness: Well, basically for spectator seating, and it was to double as assembly until such time as the auditorium would be built.

141 Mr. Ligtenberg: Mr. Moore, I meant to ask you, who wrote this article in *The Nation's Schools*?

Witness: Truett A. Roach. I do not know him and he never consulted with me about the article in any way.

142 (Witness excused.)

146 CHARLES W. VOIGTS, called as a witness by the Defendant Board of Education, having been sworn, testified:

Direct Examination.

My name is Charles W. Voigts and my address is 1868 Waverly Court, Joliet, Illinois. My business address is 168 North Ottawa Street, Joliet. I am a certified public accountant, currently certified by the State of Illinois. I work for the firm of Bansley & Kiener, a firm of certified public accountants, whose
147 main office is in Chicago at 300 West Washington Street, and the office I work out of is the branch office in Joliet.

I am now the office manager and have been the supervisor of the Joliet Branch since 1956. We have been auditing the books of account of High School District 205, Lockport High School District Number 205, since 1952 or 1953.

148 I have been supervising the audit of the District 205 books of account since 1956. Each of the audits since 1961 have been prepared under my direct supervision and authority.

149 Board Exhibit No. 23 is an audit report that we performed for Lockport Township High School District 205, for the fiscal year ended June 30th, 1961. That fiscal year started July 1st, 1960.

Board Exhibit No. 24 is an audit report of Lockport Township School District 205 for the fiscal year beginning July 1, 1961 and ending June 30, 1962.

Board Exhibit No. 25 is our audit report for the Board of Education, Lockport Township School District 205, for the year beginning July 1, 1962 and ending June 30, 1963.

Board Exhibit No. 26 is an audit report for Lockport Township High School District 205 for the year commencing July 1, 1963 and ending June 30, 1964.

150 Each of these exhibits was prepared in accordance with generally accepted accounting procedures and auditing standards, and correctly state and reflect the financial condition of the school district as of the end of each year, and a statement of receipts and disbursements of each of the respective accounts of the district for each of the years.

151 (Board Exhibits Nos. 23, 24, 25 and 26 were received in evidence.) (They are not abstracted.)

152 During the years 1961-63 (Board Exhibits Nos. 23, 24 and 25) Central High School was the only building the district was operating. During 1963-64 (Board Exhibit No. 26) District 205 operated Central High School and West Side High School.

153 The cost of transporting athletes during 1963-64 was $10,142.21. The cost woulld have been less in prior years.

154 District 205 spent $49,554 on varsity athletics, not $200,000. The actual athletic expenditures such as baseball, football, basketball uniforms, etc., were $29,-927, plus the transportation cost of $10,142. The coaches receive $9,475 as extracurricular pay. This 155 is over and above their teaching salary.

156 Since I have been auditing the books, the district has never failed to pay teachers' salaries when due, nor has it ever issued teachers' orders. It has anticipated the sale of tax anticipation warrants, but never up to its legal limit. There were always funds available to pay current bills and teachers' salaries.

157 The 1963-64 athletic receipts were $21,764.15, plus $4,063.49 from Lockport Township Central, and $3,783.56 for Lockport West High School. These latter figures are transferred to the athletic injury fund to cover necessary expenditures.

158 *Cross Examination by Mr. Ligtenberg*

The total transportation cost of the district for the fiscal year 1963-64 was $83,255.83. The transportation appropriation for that year was $130,387.00. I do not know how much of that went into the district
159 levy for transportation. There are no other expenditures relating to transportation.

160 The appropriation for transportation for 1960-61 was $55,700.00; for 1961-62, $62,166.00; for 1962-63, $69,342.00.

The actual expenditures for transportation for 1960-61 was $50,277.09; for 1961-62, $64,351.00; for
161 1962-63, $100,387.00.

Some of those funds were spent on field trips, but we do not break the figures down into specifics.

162 There were no tax anticipation warrants issued in 1960-61, 1961-62 or 1962-63.

163 Near the close of the fiscal year ended June 30, 1964 Board Exhibit 26, in the educational fund there were issued $500,000.00 of tax anticipation warrants.

The assessed valuation as equalized for this district for 1963 is $195,785,012.00.

164 The educational fund appropriation for 1963-64 was $2,030,627.00. Some of that would be derived from state aid and some other minor funds. I do not recall the amount of levy made against the taxes. I don't
165 believe it was up to the limit, for I don't think we expressed that in the report submitted to the State of Illinois.

168 I did not include the cost of maintenance of the grounds or athletic facilities in the $49,554.00 figure given or amount spent on athletics. It includes the cost of officials at the games, but there was no allocation made for the cost of the fields themselves because this is a capital expenditure.

169 In 1960-61 there was no deficit transfer from the education fund to the transportation fund.

170 In 1961-62, $21,309.67 was transferred from the education fund to the transportation fund.

In 1962-63, such deficit transfer was $44,010.39.

171 In 1963-64, the deficit transfer from the educational fund to the transportation fund was $42,150.67 out of a total transportation expenditure of $83,000 and some dollars. In other words, half of the expenditure was transferred from the education fund.

In no year up to June 30, 1964 was any amount transferred back.

172 From July 1, 1961 to June 30, 1963 athletic supplies purchased out of the construction account amounted to $334.80.

Mr. Ligtenberg: Does that over-all report of the construction fund indicate what the cost was of the

construction of the athletic facilities for either East or West High or both?

The Witness: I don't feel from the audit reports, the respective Board Exhibits for the years in ques-
174 tion (1960-64), that they could directly answer this question due to the fact that some of these expenditures are in the general contractor's fees, and we have not broken those down in our audit report.

There are various categories here, but none of which, or none of the total of which, would specifically designate perhaps what would have been spent for the total athletic equipment.

So I don't think from the information that we submit to the Board of Education in our audit report I could give you this figure accurately.

175 Our audit shows the amount spent from the construction fund for construction purposes without specifying whether it applies to athletics or physics or anything else, or what part of the buildings or grounds it applies to.

Redirect Examination by Mr. Bertani.

The figure of $29,937.00 is the amount expended in 1963-64 for athletics.

The $49,554.00 figure includes coaches' salaries and the transportation.

176 If a school district built a $1 million dollar stadium, it would be considered as a capital improvement, depreciable property with a certain life span—if it were not a school district.

Mr. Ligtenberg: There is absolutely nothing illegal about transferring funds from the educational fund to meet a deficit in the transportation account

177 There is nothing illegal about replacing it. In fact, it is probably illegal to replace it.

178 The Witness: In 1963-64 there was an appropriation of $130,000.00 for transportation. Based on that appropriation the total receipts were $75,985.77.

As of June 30, 1964, there were funds left unexpended in the construction fund.

179 *Recross Examination by Mr. Ligtenberg.*

The amount transferred from the educational fund to the transportation fund were in addition to funds received from the collector direct to the transportation
180 fund. The amounts of money that were transferred from the education fund to the transportation fund were moneys collected out of the educational fund levy and other educational fund sources.

181 FLORENCE S. LUND, called as a witness for the Defendant Board of Education, having been sworn, testified:

My name is Florence S. Lund, and my address is 1121 Madison Street, Lockport. I am a teacher at Lockport East. This is my 13th year as a school teacher in Lockport Township High School District 205.

182 I am the chairman of the publicity committee of the District 205 Teachers Organization. The publicity committee is responsible for having written a series of letters captioned "District 205 Teachers Speak" which were written to the Lockport Herald.

District 205 Teachers Organization is a voluntary organization, and its present five members were appointed by the Executive Board of District 205 Teach-

ers Organization. We were appointed in the spring for this school year.

183 The Executive Board was elected by the membership of the organization at a duly constituted meeting, and it has certain appointive powers, one of which is to appoint the publicity committee.

Out of 133 teachers in Lockport Central and Lockport West, 130 are members of our organization.

184 Neither Dr. Blatnik nor any member of his immediate administrative group is a member of this organization.

185 The committee wrote the letters cooperatively. No individual was ever responsible. The only, [illegible] Dr. Blatnik or any member of his administrative staff participated in the writing of these letters was to 186 supply tax rate figures. We also contacted the office of the county superintendent of schools and were furnished comparative figures for various districts in the area.

187 We were not aware of any policy of Dr. Blatnik or any members of his administrative staff which required that a letter, before it could be printed in a newspaper or otherwise published, be presented to the administration. We have submitted all our articles to the administration as a matter of courtesy and also as a matter of protection for ourselves in quoting figures that we have no personal knowledge of and the administration does. The administration made no changes in those letters. I would say it was an untrue statement that the letters had to have the 188 approval of the Superintendent before they could be put in the paper. No teacher was ever threatened be-

cause of activity in writing letters. Eight letters were actually published in the Lockport Herald.

189 Mr. Ligtenberg: If she says these are letters that were published in the Herald, I have no objection if they are grouped in one exhibit. You can relate them to the dates if you want to.

190 (The group of documents was marked Board Exhibit No. 27.)

The Witness: Board Exhibit No. 27 is the group of documents consisting of eight letters that the publicity committee of School District 205 prepared and had
191 published in the Lockport Herald. They are carbon copies of the articles submitted to the Lockport Herald. The originals went to the Lockport Herald.

The printed material that appeared in the Lockport
192 Herald is attached to each copy. The July 2nd letter is missing; it did not have any application to the
193 Pickering letter. The letters were published exactly as they were submitted.

(Board Exhibit 27 is received in evidence and is set out in Abst. Vol. II.)

195 The letter of September 17, 1964 does not say it was written by 98 percent of the teachers.

"It is written by members of a committee appointed by the executive board of the group which, last year, represented 98 per cent of the teachers of the District."

196 There is no statement in that letter that says the teachers threatened to close the school cafeteria and fire its personnel.

199 *Cross Examination by Mr. Ligtenberg.*

200 Our articles appear in a regular column published by the paper, and came out before the referendum. The letter of September 17, 1964 did ask:

"Will the board, if the referendum fails, cut the lunch program with all of its personnel . . . elimin-
201 ate the transportation system and the personnel involved . . . or curtail the curriculum and the teaching staff?"

We asked whether the Board would find it necessary to curtail these various programs if the referendum failed.

202 It is not our contention that each of the 130 members of the organization saw and had an opportunity to comment upon each of these letters and approve them before they were published. A committee of five or six wrote them.

203 The letters were submitted to the administrative staff mostly to see if the statements therein were correct. However, had a suggestion been made, I am sure we would have followed it.

I am familiar with the Handbook for Teachers of Lockport Township High Schools compiled August, 1964.

204 Mr. Ligtenberg: (Reading)

"Each teacher is invited and encouraged to release publicity on special events concerning his part in the total program."

"He is also invited to report to the publicity coordinator any honor or noteworthy accomplishment of his colleagues, students and former students. They may be too modest to do so."

"In order to prevent any possible embarrassment or misunderstanding, check the material with the building principal before releasing it. Any information which an individual feels should be published in the local papers should be submitted in triplicate to the publicity coordinator."

The Witness: Mr. Higgins, of our guidance department, was the publicity coordinator last year.

We submitted the articles to the administrative office, and I don't know whether Dr. Blatnik has read every one or if Mr. Smith and Dr. Blatnik have both read them.

I do not know what percentage of the teachers supported or opposed the referendum.

These articles were written to inform the public of the views of the teachers as teachers and of the needs of our school.

I don't know that we worried particularly about adverse consequences if we did not get the Superintendent's approval for the letters, but we felt it was courteous to submit them to the Superintendent. It did not occur to anyone to offer them for publication without Dr. Blatnik's approval. I don't know that we felt duty bound to do so.

I was not chairman of the committee until the fall, but I was one of the five or six that wrote the letters.

Redirect Examination by Mr. Bertani.

I was chairman when the September 17, 1964 article was written.

Mr. Bieseman, president of the organization, who was teaching summer school, would bring the original

article to Dr. Blatnik's office. He would read it and leave it with his secretary for one of us to pick up. Then one of us would take it to the newspaper office.

210 On each occasion there was no change in any of the articles.

I had read the manual before, but I confess I didn't read it now until just recently.

Mr. Higgins, the publicity coordinator, is head of the guidance department; I presume is called an ad-
211 ministrator. I was familiar with the invitation to deliver material to him.

(Witness excused.)

212 WILLIAM H. BLATNIK, called at a witness by the Defendant Board of Education having been sworn, testified.

My name is William H. Blatnik and my residence address is 901 East First Street, Lockport, Illinois.

This is the beginning of my ninth year as Superintendent of Lockport District 205.

213 I have three degrees, a B.A. from Illinois State University, an M.A. and PhD. from the University of Illinois.

Mr. Ligtenberg: I will stipulate that Board Exhibit No. 28 is a true copy of the teacher's contract of Marvin L. Pickering dated June 18, 1959.

(Board Exhibit No. 28 is received in evidence and is set out in Abst. Vol. II.)

214 The Witness: Marvin Pickering has been in the continuous employ of Lockport Township High School District 205 since June 18, 1959.

District 205 is 99-plus square miles in area, taking in most of Lockport, Homer and DuPage Townships.

Its estimated population is 35,000 to 37,000, based on the last ascertainable census of the area.

In 1961, the District had two bond issue elections. The first was held on February 25, 1961, in the amount
215 of $4,875,000.00. It was for a two-two plan. A building on the West side for freshmen and sophomores and a building on the East side for juniors and seniors. The two-year building on the West side would not be as comprehensive as a four-year building. That bond issue was defeated.

Under the second bond issue that was approved,
216 we had an auditorium at the west side four-year comprehensive high school.

The two-two plan was discarded after the defeat of the first bond issue. The second bond issue was submitted to the voters on December 2, 1961. During
217 the time between the vote on the bond issues, an entirely new plan was worked up with the aid of the Citizens Committee. This plan called for a comprehensive high school on the west side and a two-year high school on the east side.

The December 2, 1961 successful bond issue was in the amount of $5,500,000.00.

The buildings under this plan have been completed except for punch list items. The West Side
218 High School, a four-year school, was opened full-time in September of 1963. The East Side High School was opened to students August 31, 1964.

The architect firm of Kruegel, Healy & Moore of Joliet was the firm employed by the Board prior to the successful bond issue through the completion of the buildings.

219 Preliminary drawings were available to the Board and the public prior to December 2, 1961; working plans were made from these preliminary plans after the successful election.

The buildings have been completed substantially in accordance with the original preliminary plans which were extended into working drawings and construction made from the working drawings.

220 The first tax rate and transportation rate increase referendum was held May 23, 1964 . The tax rate for education is now 65 cents. In that referendum we asked for an increase of 21 cents, bringing the rate to 86 cents. The current transportation rate is 2 cents and we then asked it to be raised to 10 cents.

211 That referendum was unsuccessful.

We again went to the voters with the same rate increases on September 19, 1964, and it was unsuccessful.

Other than the two bond issues in 1961 and the two tax referendums in 1964, there have been no other bond or tax rate referendums submitted to the public.

222 I first saw Mr. Pickering's letter in the Lockport Herald on the day it was published, September 24, 1964.

Prior to September 24, 1964, Martin L. Pickering had never come to me officially about any subject matter of Board Exhibit No. 1.

223 I cannot recall missing any Board meetings since January of 1961 to the current date. To the best of my knowledge, Marvin L. Pickering, prior to September 24, 1964, had never officially presented to the Board any items or subject matter contained in Board Exhibit No. 1.

224 It is a false statement that there has been a "how far" deviation.

225 There is no swimming pool at either school.

In the original plans for the December 2, 1961 bond issue there was to be an auditorium in the four-year 226 school. It was in the working drawings and had been constructed. It is a false statement that the auditorium was left out of the West Side High School original plans.

In the original plans there was to be an athletic field at West Side High School. It is a false statement that it was left out of the original plans. West Side High School does have an athletic field serving the use of the school.

227 Neither I nor the Board ever promised that the auditorium or the athletic field would be left out of the four-year West Side High School.

Referring to the third paragraph of Board Exhibit No. 1, it is a false statement that the bond issue has been twice defeated. We had a bond referendum in 228 1961—one unsuccessful, one successful. Since December 2, 1961, we have had none.

The Board of Education and Administration have stated that teachers' salaries total $1,297,746.00 for one year. The figure stated in the letter is 100 per- 229 cent correct. The figure is taken from page 4 of the budget and includes all salaries for all teachers, counselors, principals and their assistants, their secretaries, plus sick leave for those people, extracurricular pay for teachers, the increments from bachelor's to master's degrees, and perhaps, going from one degree 230 to another. Also, contingency.

230 The next statement in Board Exhibit No. 1:

"Now that must have been the total payroll . . ."

That is a false statement.

". . . otherwise the teachers would be getting $10,000 a year."

There are 147 teachers on the faculty, including one part-time teacher and one special education teacher in the high school. If you take 147 teachers and mul-
231 tiply that by $10,000.00, you do not arrive at a figure of $1,297,746.00 or anything close to it. It would be $1,400,000 plus.

I never made the statement:

"Any teacher that opposes the referendum should be prepared for the consequences."

It is a false statement that I said that.

Referring to paragraph four of Board Exhibit No. 1 and the reference to the letters entitled "District 205 Teachers Speak" (Board Exhibit No. 27), it is a false statement that:

"Did you know that those letters had to have the approval of the Superintendent before they could
232 be put in the paper?"

There is no ruling, regulation, policy or otherwise of this school district, either promulgated by me or the School Board which requires school teachers to submitters letters of this type for my approval before publication. Board Exhibit No. 1 was not submitted to me by Marvin L. Pickering before he printed it.

There is a statement in the letter that "the taxpayer's child should only have to pay about thirty cents for his lunch instead of thirty-five cents" because we

are supplying free lunches for athletes is a false statement.

233 The cafeteria does supply and deliver lunches to athletes. The coach or the athletic director signs a requisition requesting X number of lunches, usually consisting of milk, a sandwich, apple, or candy bars. The cafeteria manager then submits the bill to the school district who then reimburses the cafeteria. The lunches are charged to the athletic department. They are paid for out of the athletic department account by District 205.

234 These lunches were supplied for away games. I don't know if they are supplied when travel for a game would force the athletes to miss a meal.

235 The cafeteria is losing money. That is not directly or indirectly attributable to the providing of lunches to athletes.

The next statement in the letter is:

"But $20,000.00 in receipts doesn't pay for the $200,000.00 a year they have been spending on varsity sports while neglecting the wants of teachers."

236 I have not neglected the wants of teachers. After refreshing my recollection from the salary schedules, 237 the starting or base salary in 1956-57 was $3,950.00. This year it is $5,200.00. In each of the last nine years, with the exception of this year, the teachers have received a salary increase.

A basic reason why there was no increase this year is the failure of the educational rate referendums.

Since the opening of the two new schools, the State Inspectors have visited the district. None of their 238 reports indicated the wants of the teachers were being neglected.

We have not been able to give the teachers everything they want. Last year we lost eleven teachers
239 out of a staff of 132. In the last three years we have averaged six teachers per year leaving for other positions. We have had more job requests on file than there were openings.

In my opinion as an educator of long standing and being with this district for nine years as its Superintendent, the wants of the teachers are not being neglected.

The statement that $200,000.00 a year is being spent on athletics while the wants of the teachers are being neglected is untrue.

At Mr. Bertani's request I went through with the auditor and found out what is spent on varsity sports.
240 I assume his figures are correct.

Moving on to the next paragraph of the letter:

"To sod football fields on borrowed money and then not be able to pay teachers salaries is getting the cart before the horse."

If it were true, we should not sod football fields if we cannot pay teachers.

241 The district has never failed to meet a teacher's salary when it became due in the past nine years. We have never issued script. Each teacher was paid with a check he could cash immediately.

The football field at West Side High was sodded out of the construction fund which I do not consider borrowed money.

242 The football field at Lockport Central was sodded out of the current building fund from current revenues.

243 The auditor's figure of $10,142.00 for transporting athletes was correct. We have never spent $50,000 in one year transporting athletes, nor $200,000 on varsity sports.

I know that in the original plans for the East Side High School there were no doors on some of the classrooms.

244 I concurred with the architect's recommendation of the elimination of the skylights in the plant room.

There was no serious question raised in the planning, building, opening or using of the building because of lack of water in the first aid rooms. They are serving the purpose for which they were designed.

245 I heard about the sidewalk collapsing, but I wasn't too much concerned about it because it was replaced not at district cost.

Student enrollment totals 2,550 of which we trans-
246 port 2,215 this year. In 1963-64 we transported 1,966. The gross cost of transporting in 1963-64 was $82,-527.00. It would be false to say it cost $50,000.00 to transport athletes.

247 I never required the articles "District 205 Teachers Speak" be seen by me before publication. I don't know if I saw all of them before publication. I made no changes in the ones I saw. I did not personally agree with all that was written therein. I have taken no detrimental action toward the teachers who proposed and wrote those letters.

248 It is a false statement that:

"I must sign this letter as a citizen and taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration."

I am proud that nothing goes on behind the walls of

the high schools that is not in accordance with good, sound school administration.

Cross Examination by Mr. Ligtenberg.

249 Altogether there were four tax rate and bond issue refenda. Three of those four lost.

250 Referring to paragraph one of Board Exhibit No. 1, it does not state any specific deviations from the original promises of the Board. I could say from that statement that someone has been charged with making
251 deviations.

The difference between the two bond issues was $625,000.00. $5,500,000.00 minus $4,875,000.00.

(Teacher's Exhibit No. 3 was marked for identification.)

252 Teacher's Exhibit No. 3 is a piece of literature produced by the Board for the first bond issue referendum. It includes the statement:

"The present athletic field will be used for interschool competition. Areas adjacent to the new buildings will be used as practice fields until future needs dictate improvements or additions."

253 It also says:

"Present auditorium and swimming pool will serve entire area. However, new building plans lend themselves to future expansion without premium cost for these additional facilities."

254 Mr. Ligtenberg: Is it true, then, that the auditorium was not in the first bond issue for West High?

Mr. Bertani: Objection. Mr. Pickering's source of information was certain paper issues that are contained in this volume, the letters of February through

November of 1961. Reference to a brochure is out of the scope of proper cross examination.

Mr. Ligtenberg: This witness under guidance of counsel made numerous statements that statements in this letter are not true. Whether or not they are true does not depend on whether they are referred to
255 in that volume over there.

Mr. Bertani: I withdraw the objection.

The Witness: Neither the auditorium nor an athletic field for varsity sports for West Side High School was included in the plans for the first bond issue.

256 The original promises made to the district did not include an auditorium or an athletic field for varsity sports.

Subsequently another bond issue passed.

During the designing period plans for a swimming pool were considered as an alternate. A bid of $250,000.00 for a pool at West Side High was received
257 and rejected because it would have brought us above the bond issue amount.

Mr. Ligtenberg: Was the architect paid anything for these swimming pool designs apart from the building construction fee?

Mr. Bertani: I am going to object to that as being immaterial and irrelevant.

258 Mr. Anderson: Objection sustained.

Mr. Ligtenberg: I ask that this issue of the Lockport Herald dated Thursday, February 21, 1961, be marked Teacher's Exhibit No. 4 for identification.

(Teacher's Exhibit No. 4 was marked for identification).

259 The Witness: I would say that the Board did not furnish the information in that article entitled

"LTHS Referendum Vote Is This Saturday"

Perhaps it was the publicity committee, a committee that grew from five or six appointed by the Board and they kept appointing people until they numbered about 100 people or so. This committee worked with the Board for the purpose of providing the community with the facts regarding the proposed schools, and to advise the Board with regard to community desires concerning the proposed schools.

260 The paragraph entitled "No Frills" is a fair statement of what the Board proposed in regard to these schools for the first referendum.

261 *Redirect Examination by Mr. Bertani.*

The brochure, Teacher's Exhibit No. 3, was not prepared by any one individual. Both the citizens publicity committee and I had a hand in it.

262 The firm we had was the Illinois School Consulting Service, from Monticello, Illinois.

Both Teacher's Exhibits Nos. 3 and 4 refer to the two-two plan which was defeated by the voters. The buildings were not built.

263 (Teacher's Exhibits Nos. 3 and 4 received in evidence and are set out in Abst. Vol. II.)

264 *Re-cross Examination by Mr. Ligtenberg.*

The Illinois School Consulting Service was a service contracted for by the Board and paid for as part of the program to promote the building idea.

I don't remember if the architect gave an estimated cost of an auditorium for the West Side High School.

(Teacher's Exhibit No. 5 marked for identification.)

266 Teacher's Exhibit No. 5 was published by the Board prior to and for the second bond issue.

It does not mention an auditorium. I presume several thousand of these were printed and an attempt was made to bring it to the attention of the voters of District 205.

267 (Teacher's Exhibit No. 5, received in evidence and is set out in Abst. Vol. II.)

268 We told the public it would be a comprehensive four-year high school.

269 There was other publicity paid for by the Board in regard to the second bond issue.

270 (Teacher's Exhibit No. 6 marked for identification.)

271 Teacher's Exhibit No. 6 is the other literature put out by the Board. It does not mention an auditorium *per se*. It mentions a swimming pool in a sentence in in parenthesis:

"(In the interests of economy, some features that we would like to have, such as a swimming pool, will not be included in the basic plan—but there will be a provision for such features to be added at a later date, or even at the outset if bids on the basic plan should come in sufficiently below the estimates.)"

272 (Teacher's Exhibit No. 6 is admitted in evidence and is set out in Abst. Vol. II.)

273 There was no other official communication to the public. In the two official pieces of literature there

was nothing informing the public of an auditorium in West Side High.

I do not remember specific dates of public meetings or if the auditorium was mentioned at them.

274 Somewhere we mentioned a comprehensive high school, but I can't prove we mentioned an auditorium.

I remember a meeting at Valley View where a
275 sketch of the proposed building was shown. That sketch showed what facilities would be provided.

276 Mr. Ligtenberg: The Bill of Particulars says:

"As to teachers salaries stated in paragraph 3 of Mr. Pickering's letter we know of no letter written
277 by either the board or administration that state teachers salaries for the figure indicated."

The Witness: At the time of preparing the Bill of Particulars I knew of no such letter.

280 Voluntarily I submitted a letter to the Lockport Herald mentioning a figure of $1,279,000.00. That letter appears on page 4 of Board Exhibit No. 14. The figure was correct, but instead of the word "teachers" it should have said "instructional salaries".

281 The budget specifies that the salaries I listed are included under "Instructional Salaries".

282 It does not include the Superintendent, the assistant superintendent, the cafeteria, the nurses, the custodians or maintenance personnel.

284 The figure includes teachers and administrators except the superintendent and assistants, librarians, counselors, sick leave for these people, extracurricular pay, increments for additional degrees, and contingency for these people. It includes principals and deans, secretaries for the high school's secretary sick

leave. There are four secretaries per building—this
285 in addition to the 146 teachers.

I signed the letter in Board Exhibit No. 14 "Your Board of Education and Administration". I also signed my name. I did have authority from the Board to state it was on their behalf.

286 It was a series of letters written to induce the voters to vote for the tax referendum.

287 There are 16 more teachers in this district this year than last. Last year there were about 130 teachers.

Mr. Ligtenberg: So that a person who thinks by teachers you mean teachers, there would have been 130 teachers in 1963-64?

Mr. Bertani: Objection, because the letter refers to 1964-65. It was written in the year 1964. It was written September 19th of 1964.

Mr. Ligtenberg: Does this letter disclose how many teachers there were in 1963-64 or 1964-65?

289 Mr. Anderson: The objection is sustained, because the figures are based on the current school year in the article.

The Witness: Some classroom teachers are making $10,000 a year.

291 I recall attending a faculty meeting at East Side High School on August 31, 1964 to address the teachers. I discussed the then pending referendum for a tax rate increase.

292 I did not then or ever make the statement "any teacher that opposes the referendum should be prepared for the consequences."

Mr. Pickering discussed the referendum with me on August 31, 1964, after the meeting. I do not know

if Mr. Pickering worked in connection with this tax referendum.

293 I do not know if Mr. Pickering worked for, or opposed or favored, the passage of either bond issue or either tax rate increase referenda.

294 (Teacher's Exhibit No. 7 was marked for identification.)

Teacher's Exhibit No. 7 is a letter addressed to "Dear Parents" and signed "Your Board of Education and Administration". I helped prepare it. Paragraph 7 says:

"The present 65 cent educational tax rate is inadequate to meet the teachers' salaries which alone total $1,297,746.00."

Mr. Ligtenberg: Is that supposed to suggest to the voters of this district that if they don't vote for
295 the educational tax rate the teachers may go unpaid?

Mr. Bertani: Objection, as calling for a conclusion, an opinion.

Mr. Anderson: Objection sustained.

The Witness: There will be a greater cash deficit during the current year, a greater shortage of money, due to the defeat of this tax rate referendum.

296 (Teacher's Exhibit No. 7 is received in evidence and is set out in Abst. Vol. II.)

297 The athletes did not pay for the lunches themselves; to them they are free.

Mr. Ligtenberg: Board Exhibit No. 1 makes the statement in regard to this: "If the cafeteria is losing money, then the board should not be packing free lunches for athletes on days of athletic contests."

Now, is that a fact or a statement of opinion, in
298 your judgment as an educator and a scholar in the field of good English?

299 The Witness: I don't want to be facetious, but the Board isn't packing free lunches. If they were being packed they would be packed by someone else.

I labeled that statement on direct examination as untrue, even though I now agree the athletes don't pay for the lunches.

300 What is untrue is that the lunches that are given to the athletes have no bearing on the price charged the students for their meals at the cafeteria.

301 Mr. Ligtenberg: I think you got yourself on that one, all right, because it doesn't say that.

The Witness: I will concede the right of a citizen to criticize giving free lunches to athletes.

Mr. Ligtenberg: Referring to the paragraph in Mr. Pickering's letter when he said:

"You see we don't need an increase in the transportation tax unless the voters want to keep pay-
302 ing $50,000.00 or more a year to transport athletes home after practice and to away games, and etc."

Do you know what else Mr. Pickering was including in the et cetera?

Mr. Bertani: Objection. It is calling for an opinion as to what was Mr. Pickering's state of mind.

Mr. Anderson: Objection sustained.

Mr. Ligtenberg: But the "et cetera" is included in the $50,000.00.

303 Mr. Bertani: The "et cetera" applies to the transporting of athletes, not to the spending of $50,000.00.

The Witness: A state expert from Springfield said the loss in the lunch program was basically due to the cost of food. Everything else, including help, was in line.

304 We may charge a student more than 35 cents a lunch only with the permission from the state department in Springfield. We may charge anyone else what we care to charge them.

305 We are charging pupils 35 cents.

The football field at West High School was sodded in the early fall of 1963.

306 The field at Central was sodded in the summer or fall of 1964.

Speaking of the wants of the teachers, they are not getting all the equipment that they ask for for their instructional needs or desires. Sometimes they get less than they ask for.

307 The teachers are not satisfied with their salaries. There are some unmet wants here. Each time the Board met with the teachers' committees it found it could not grant all the salary asked for.

It is true that some classrooms in East and West high schools do not have doors, that the plant room has no means of direct sunlight, and that in the first 308 aid area there is no running water.

I neither encouraged nor discouraged the teachers who put out "District 205 Teachers Speak". I did not agree with all that they wrote. I did cooperate with them when they asked for facts and figures.

Mr. Ligtenberg: Referring to Board Exhibit No. 27, can you tell us some of the things that you did not agree with?

309 The Witness: On page 2 of the first article it says:

"As Diogenes said many centuries ago, 'The foundation of every state is the education of its youth'."

I object to this only because, in my opinion, I didn't think it was necessary in the article. I don't object to the content, but if I had written it I wouldn't have put it in there.

310 The objection was editorial rather than factual.

I have now had an opportunity to read all the contents of all these letters and have no further objection to them.

311 Referring to the "District 205 Teachers Speak" article of September 17:

"Will the board, if the referendum fails, cut the lunch program with all of its personnel, eliminate the transportation system and the personnel involved, or curtail the curriculum and the teaching staff?"

312 After the defeat of the tax referendum, we still have the cafeteria. We have increased the price for adult lunches and taken the dessert away and added the cost of dessert to pupils' lunches. We did not cut the lunch program; we raised the prices.

We eliminated parts of the transportation system. It may have meant a loss in personnel for the contractor—for it is a common carrier contractual service. I don't know what he did.

313 We did not curtail the curriculum, but we did curtail some of the extracurricular activities. We did not cut the teaching staff.

Mr. Ligtenberg: Will it be necessary to make any further cuts during the current year?

Mr. Bertani: Objection. Immaterial to any issue in question.

Mr. Anderson: Objection sustained.

Mr. Ligtenberg: Well, it so happens that I agree. I also agree that all this testimony today is basically irrelevant because I think that the real issue here is
314 whether he had a right to write the letter, without reference to the fact as to whether every statement in it was true or untrue.

The Witness: I do not object to the statement in "District 205 Teachers Speak" that we have been discussing.

315 *Redirect Examination by Mr. Bertani.*

316 Referring to Board Exhibit No. 3, the November 30, 1961 issue of the Lockport Herald, in the lower left-hand corner of page 1 of that edition there appears a drawing of Lockport West High School. That picture was taken from a 3 by 4 foot color drawing made by the architectural firm of Kruegel, Healy & Moore.

317 The caption under the picture refers to an auditorium.

318 (Page 1 of Board Exhibit No. 3 is received in evidence and is set out in Abst. Vol. II.)

320 We used the drawing in the 10 or 15 speeches made in relation to the second bond issue.

321 The auditorium is presently constructed like the drawing. The West Side High School site plans always included an auditorium, and these plans were made available to public inspection.

322 Free lunches to athletes does not contribute to the cafeteria loss or the fact the cafeteria is charging 35 cents for its lunches.

323 No wants of teachers are being neglected because of the statement the Board is allegedly paying $200,000 a year for varsity sports. The wants of the teachers are being neglected due to lack of funds.

325 *Recross Examination by Mr. Ligtenberg.*

The picture in Board Exhibit No. 3 was published two days before the election.

326 It shows a football field, but there is no stadium at West Side High School. The caption says a physical education field is included, but it is difficult to perceive from the picture if it is a track or tennis court.

327 An estimated 50, 100, 200 people attended the meetings I went to. I wouldn't say there was a total 1,000 attendance.

I know of no reason why an auditorium was never mentioned in the circulars. I assisted in preparing them.

328 I would say the auditorium was built substantially on the scale as shown in the picture. A driveway and a parking lot exist now but are not shown in the picture.

329 Some of the equipment was paid out of funds other than the construction fund.

The brochure for the second bond issue was prepared by the administration, board, citizens advisory committee and the consulting service.

330 The loss last year in the lunch program was 9½ cents per pupil per lunch. I do not remember the total dollar amount.

337 *Redirect Examination by Mr. Anderson.*

The total loss in the cafeteria for the year 1963-64 was $19,464.56. That is for both cafeterias, West High School and Central High School.

Mr. Anderson: I have no further questions.

(Witness excused.)

Mr. Bertani: There are no further witnesses that I wish to present at this time, Mr. Anderson, and I rest.

337 Mr. Anderson: Mr. Ligtenberg, would you proceed
338 with Mr. Pickering's case?

339 Mr. Ligtenberg: I would like at this time to call Dr. Blatnik as an adverse witness under Section 60 of the Civil Practice Act.

340 WILLIAM H. BLATNIK, called as an adverse witness by Marvin L. Pickering the Plaintiff, having been sworn, testified:

Direct Examination by Mr. Ligtenberg.

341 I was present at the October 8th Board meeting and had placed the item about Mr. Pickering on the agenda of that meeting. (Teacher's Exhibit No. 2).

The idea of disciplining him came from both myself and Board members, and was discussed at least a week prior to the October 8th meeting.

342 The attorney, John Verklan, prepared the dismissal resolution which I saw for the first time on October 8th. I had not discussed it with him personally before that.

343 Most of the Board and myself met at West Side High School on October 5th and determined that such

a resolution should be prepared. I would have to check the means used to call that group together.

344 I instructed one of my secretaries to communicate notice of the meeting.

345 This meeting on Monday night, October 5th, was not an official meeting. I think all the Board members were present, and myself, and Mr. Smith, my assistant. No record was kept of what was discussed, but I don't think the Pickering letter was the only thing.

346 I do not know who instructed the attorney as to what to put in the resolution. I did not. I saw the resolution for the first time when it was read in the executive session during the Board meeting on October 8th by John Verklan, our attorney.

347 I was then and am still in accord with all parts of that resolution.

I am not sure, but I think the notice of dismissal was prepared and served the next day.

348 I still agree that the notice stated all facts.

349 I wrote the letter, page 4 of Board Exhibit No. 13, which appeared in the September 17, 1964 issue of the Lockport Herald. That is the letter that contains the figure for teachers' salaries of $1,297,000.00 plus.

350 I do not recall any tax warrants being issued against the building fund between July 1, 1963 and June 30, 1964; but the record would speak for itself.

352 On July 1, 1964 there were $500,000.00 in educational fund tax warrants outstanding. They were still outstanding on September 24, 1964. They were paid
353 off when the tax moneys came in—about October or November, 1964.

After July 1, 1964, the Board of Education caused to be issued tax anticipation warrants against the building fund. I would have to check the exact amount.

354 These warrants have not been sold as of today.

I do believe we have borrowed money from the building fund to the education fund, but I would have to refer to the records not in this room.

355 The district has no business manager. Mrs. Fay Ayres, a clerk, keeps the records. Mr. Smith, my assistant, and I deal with the finances. Mr. Ward, the secretary to the Board, does not handle finances.

357 Mr. Bertani: Objection, on the ground it is irrelevant.

Mr. Anderson: What is the relevance of your question to Board Exhibit No. 1?

Mr. Ligtenberg: It is relevant to the item in the letter that says "To sod football fields on borrowed money."

Since borrowed money is undoubtedly mingled with the general funds of the district, it raises some question . . . as to whether any particular item, any check or any warrant that was drawn by the Board of Education or its treasurer, might be paid out of borrowed money.

359 Mr. Anderson: Objection sustained.

Mr. Ligtenberg: Counsel is objecting on the basis that Mr. Pickering is supposed to know more about the finances of the district than the Superintendent of Schools is supposed to know.

360 Mr. Bertani: My ruling was sought on borrowing money from the construction fund to the education fund, on that question alone.

361 Mr. Ligtenberg: Do you recall if a resolution was adopted on November 22, 1964 authorizing preparation of tax warrants for $1,115,000.00?

Mr. Bertani: I object on the basis that the issues before this Board of Education are the issues as they existed on October 8, 1964, when the resolution of dismissal was passed.

362 Mr. Ligtenberg: I think the Board Exhibit No. 1 calls into question the general finances of the Board of Education; and, taking it hypothetically now, if the Board had to borrow, foresaw that it was going to have to borrow, large sums of money during the current fiscal year in order to meet expenses, running as high as something over a *million* dollars, this would have a relevance to show the general financial condition of the Board of Education.

363 Mr. Bertani: The action of dismissal, as far as my position is concerned, and my objection to the question, is that it must stand or fall on the conditions as they existed by no later than October 8th, 1964.

364 Mr. Anderson: The objection is sustained.

Mr. Ligtenberg: Then I will have to make an offer of proof.

I offer to prove by this witness, that the Board of Education of School District No. 205, Will County,
365 Illinois, was, during the fiscal year 1964-65 and prior thereto, operating to some extent and perhaps to a progressively greater extent on borrowed money.

366 Mr. Verklan: You can make an offer of proof, but you are not allowed to make the proof.

Mr. Ligtenberg: May the witness refer to the minutes of the meeting of the second Thursday of November, 1964?

367 Mr. Bertani: I object, on the ground that what occurred after October 8th, 1964 is not pertinent to the issues.

Mr. Anderson: The objection is sustained.

Mr. Ligtenberg: May counsel examine those minutes at this time?

368 Mr. Bertain: I don't know if the minutes are here.

Mr. Anderson: The Board secretary is not here today. I don't know if his minutes are.

Cross Examination by Mr. Bertain.

There was no decision or vote taken on any matter
369 dealing with Mr. Pickering taken on October 5th, 1964. We had a planning session, not a meeting. We have held such a planning on other occasions.

370 Teachers' salaries have always been paid.

371 *Re-Direct Examination by Mr. Ligtenberg.*

The dismissal resolution was discussed in executive
372 session of the October 8th meeting for about a half an hour. There was no further discussion when the Board emerged from the executive session. An immediate roll call vote adopted the resolution.

373 I do not know if any revisions were made in the resolution as presented by the attorney during the executive session.

Re-cross Examination by Mr. Bertani.

The resolution was read aloud in open meeting before the vote.

374 The October 5th meeting was not called primarily to discuss the Pickering matter.

374 *Re-direct Examination by Mr. Ligtenberg.*

The agenda with the Pickering item was in the hands of the Board members on October 5th.

375 We have held such planning sessions prior to an official meeting about four or five times in the last year.

(Witness excused.)

376 WILLIAM T. JACKSON, called as a witness by Marvin L. Pickering, the Plaintiff having been duly sworn, testified:

Direct Examination.

My name is William T. Jackson and my address is 1012 Milne Drive, Lockport.

This is my seventh year as track coach and teacher
377 of earth science in District 205, Will County, Illinois.

I read the letter, Board Exhibit No. 1, in the Lockport Herald. I had not seen it before that time.

378 I came to testify on response to a subpoena, and not otherwise.

I do not recall a conversation with Mr. Pickering and other teachers in the cafeteria at East High School about the track at West High School. Such a conversation did take place in the faculty lounge.

379 I do not recall whether Mr. Pickering was there.

380 I probably said I had heard that the track was off in some respect. I had heard it, yes. I had heard that the track was laid out with the curb used as the

measurement for the 440 yards. It should have been measured one foot outside the curb.

381 Mr. Ligtenberg: I ask that a booklet entitled "Athletic Field and Court Diagrams" containing the Illinois High School Athletic Association rules and specifications be marked as Teacher's Txhibit No. 8.

(Teacher's Exhibit No. 8 was marked for identification.)

384 Mr. Jackson: The diagram in Teacher's Exhibit No. 8 shows the approved layout of a track with markings on it, suggested markings for each race.

385 The diagram shows a curb with a dotted line just outside the curb which infers where the measurement is made.

I had heard the Lockport West track was measured wrong in this respect.

386 *Cross Examination by Mr. Bertani.*

There is no regulation for the holding of a track event in Illinois sponsored by any of the sponsoring organizations that requires a quarter-mile track one foot from the curb be exactly 440 yards around, from beginning to end.

388 It is not necessary that the start and ending of the race be on the same line across the track.

390 The booklet is published by Wilson Sporting Goods Company.

On page 8 of the booklet, near the top, it says "Ap-
391 proved by the National Federation of State High School Athletic Associations."

According to my knowledge of tracks, it is a correct diagram of a standard track.

(Teacher's Exhibit No. 8 admitted into evidence and is set out in Abst. Vol. II.)

394 Mr. Jackson: Lockport Central track measures about 407 yards. A track is not regulation if by regulation is meant 440 yards ont trip around as shown in the diagram.

394 Lockport Central was built before I came here seven years ago. I have been track coach at Lockport Central for six years.

395 Sanctioned track meets of the South Suburban Conference have been held here.

School, not conference, records have been established, approved and sanctioned on this track.

396 The conversation I heard in the teachers' lounge was directed to the Lockport West track, not the Lockport Central track. I don't know who gave me this information. It was not made by another track coach.

397 I have no personal knowledge of the regularity or irregularity of the Lockport West track. I have never attended track meets at Lockport West. Our athletes were rained out there.

398 I do know there have been conference track meets other than South Suburban Conference ones at West Side High. I don't know if records of these meets were kept.

399 The fact a track measures more than 440 yards does not make it non-regulation. The course is measured before the race and a hashmark is drawn across the track to show the beginning and the ending of that race.

400 On a 440 yard track, the race starts and stops at the same place. Whether it was regulation distance depends on the distance between the starting and end point—if the track was properly measured first.

401 *Re-direct Examination by Mr. Ligtenberg.*

In a mile race on a 440 yard track, the starting and
402 finishing point would be the same. I can only assume that the track at Lockport West is regulation.

(Witness excused.)

404 LEE E. ATWATER, called as a witness by Marvin L. Pickering the plaintiff, having been sworn testified:

Direct Examination.

My name is Lee E. Atwater and I live at 523 Miller Street in Beecher, Illinois.

I began to teach world history and social science at Lockport East in this district at the beginning of
405 this term. Prior to this I was Superintendent of the school district in Beecher, Illinois for four years. I taught elsewhere in Illinois prior to that.

I was present at a faculty meeting held in this school district on August 31, 1964. At that meeting,
406 Dr. Blatnik spoke about various matters. I did not hear him say:

"Any teacher that opposes the referendum should be prepared for the consequences."

407 I don't recall exact words. However, it was clearly brought out that should this bond issue fail all would be affected by it. I don't think he said any they had to vote.

I talked to Dr. Blatnik after the meeting. Mr. Pickering came up at the time.

408 I don't recall that any part of the conversation with Mr. Pickering concerned any statements made by Dr. Blatnik.

No Cross Examination.

(Witness excused.)

409 LEO PRYOR, called as a witness by Marvin L. Pickering the plaintiff, having been sworn, testified:

Direct Examination.

My name is Leo Pryor and my address is 530 East 13th, Lockport.

I teach chemistry at Lockport Central High School, District 205, Will County, Illinois.

410 I attend classes in the laboratory and the lecture demonstration area. That room has gas jets available for students in performing their work and experiments.

We have gas leaks from time to time.

411 There was a major overhaul of the gas lines last summer. There had been a leak in the pipes underneath the floor. That leak could have possibly existed for some years.

412 It was definitely more than a year ago that I called the attention of the administration to the leak. When you ask about two years, I don't remember.

413 If the room is confined, gas can be detected by the nostrils of a person, depending on its concentration at the particular time. The danger point of such a condition exists before it can be readily noticed by the nose.

414 Prior to the repair last summer, I operated by turning off the main gas shutoff valve at night and turning it on in the morning. This practice should be followed regardless of the condition of the lines. I have always done it and still do it.

415 I am head of the science department at Central. I have personally checked the gas since coming here in 1951.

Cross Examination by Mr. Bertani.

417 For a year prior to the summer of 1964 we knew there was a gas leak. Highland Plumbing Company tested the lines in May or June, 1964, not immediately upon my calling attention to the leak.

In 1963 I called this to the attention of the administration and I believe I had talked with a member of the Board committee prior to that time and had personally conducted this member there to let him see what I was talking about.

418 During this period of time, Ernest Swanson, Jr., a Board member, and I went through the labs and drew up a comprehensive plan for the repair and renovation of the labs.

419 *Re-direct Examination by Mr. Ligtenberg.*

Approximately 10 and 14 months before the repair was made the leak existed to my knowledge, and I had reported it to the administration.

420 *Re-cross Examination by Mr. Bertani.*

During that period we maintained standard classroom procedure and used gas every day.

The ceiling below the lab was torn up during the repairing, not the floor of the lab.

421 It would have interfered with classes below if it had been done in the summer.

Re-direct Examination by Mr. Ligtenberg.

422 We couldn't find the leak, so this summer the total facilities gaswise were bypassed and totally new lines were put in.

The general things that were known would constitute a safety hazard to the people in the building.

Re-Recross Examination by Mr. Bertani.

423 There were attempts during this period to locate the leak.

428 PHILLIP POLLEY, called as a witness by Marvin L. Pickering, the Plaintiff, having been sworn, testified:

Direct Examination.

My name is Phillip Polley, and my address is 19
429 Oak Road, Lockport. I teach English at Lockport East High School.

429 I was present at a faculty meeting at Lockport East High School on August 31, 1964 when Dr Blatnik spoke.

In reference to Board Exihbit No. 1, I recall Dr. Blatnik saying:

"You should be prepared to face the consequences."

430 It seemed to me that he included all the people to whom he was speaking, not just the teachers who opposed the referendum.

I was struck by his statement "You should be willing to face the consequences" and I jotted it down. I am not sure that I can interpret that statement,

431 but I did hear the statement. He said "you", not "teachers". But there were only teachers there, as I recall.

Cross Examination by Mr. Bertani.

432 I do not recall Dr. Blatnik making the exact statement:

"Any teacher that opposes the referendum should be prepared for the consequences."

Dr. Blatnik did talk generally about the tax referendum and the financial condition of the school district.

433 I am aware that teachers' salaries are at least partially paid out of education funds and that the referendum called for an increase in the tax education rate.

Mr. Bertani: Do you remember any language in Dr. Blatnik's speech or talk which could be reasonably construed as constituting a threat to teachers who opposed the bond issue?

The Witness: There was one point where I thought a statement he made was ambiguous, when he said, "Be prepared to accept the consequences." He did
434 not specify what consequences he had in mind.

435 I do not recall if Dr. Blatnik said we should or should not be for or against the bond issue.

(Witness excused.)

436 MARVIN LORAIN PICKERING, the Plaintiff herein appearing as a witness on his own behalf, having been sworn, testified:

Direct Examination.

I am Marvin Lorain Pickering, Rural Route 2, Gouger Road, Lockport, Illinois. I have been employed as a Science teacher at Lockport High School, District 205, since 1959.

437 I am the Marvin Pickering who wrote the letter that appeared in the Lockport Herald issue of September 24, 1964.

I had been interested in the affairs of Lockport High School before writing the letter. I worked on the building program and attended almost all board meetings in the last year or two.

438 I worked on the first bond issue for $4,875,000.00 by passing out to people the circulars that have now become exhibits. I followed the instruction of the citizens advisory committee by going from door to door with this type of thing. I also spoke on behalf of the bond issue. I also distributed circulars for the second bond issue for $5,500,000.00. I spoke to around 50 people about its passage.

439 I was personally in favor of the bond issue. I took no active part in the tax referendum elections.

Prior to September 24, 1964, I read back issues of the Lockport Herald to determine what promises had been made in regard to the building program.

440 I got issues between February and November of 1961 at the Lockport Herald office to take home and study. I also had the circulars and the pamphlet given to us by the citizens committee.

441 I attended discussions in the community and the training session for people handing out the circulars.

I have managed to attend most Board meetings for the entire meeting time over the last two years.

442 As a result of these sources of information, I came to the conclusion there had been some deviation from the original promises of the Board of Education with regard to these high school buildings.

We were told to tell the people on the first bond issue that there wasn't going to be an auditorium.

443 We were so instructed at the orientation meeting and in the circular we were given.

The athletic fields were only going to be used as practice fields, on the first bond issue. Many of the voters were afraid they were going to build an expensive stadium.

444 On the first bond issue, I was also given to understand there would be no swimming pools, and there are none in the new buildings. There are auditoriums in the new buildings.

445 Teacher's Exhibit No. 5 is a circular I distributed for the second bond issue.

Teacher's Exhibit No. 6 was just given to me as a worker from the Superintendent.

446 In examining the back issues of the Lockport Herald and these exhibits, I could not find anywhere that there was definitely going to be an auditorium or a stadium type athletic field for varsity sports. I considered these deviations from the plans of the second bond issue, for West Side High School has an auditorium and an athletic field for spectator sports.

447 Many voters were concerned about those items. The circulars I handed out indicated there would not be an auditorium; or, at least, the first time it said

definitely there wouldn't be one, and then the second time, the second piece of literature still did not say there would be. It didn't say that there might be.

I felt that at least if we are going to tell the people one time there is not going to be, the next time, if we plan on having one, we should have told the people, "Well, we plan on having one this time."

I distributed leaflets and talked to voters prior to November 30, 1961, when the picture showing the auditorium appeared in the Lockport Herald.

448 There were public meetings held to explain the situation in connection with both bond issues. At the meetings I attended they said there was going to be
449 an athletic physical education field, but they didn't say it was going to be used for varsity sports.

449 In the first bond issue they said it was only going to be used as a practice field, so I think everyone had the feeling that this was going to be the same way.

I considered the fact they went ahead and put this in here without specifically stating that they were going to do so a deviation from the original promises in the second bond issue.

My basis for saying

"In fact, Lockport West has a better athletic field than Lockport Central." (Board Exhibit No. 1.)

is the fact there is more area and more practice fields,
450 and there are no trees to contend with when catching fly balls. My opinion, at the time of writing the letter, was that Lockport West was the better field.

I said:

"It has a track that isn't quite regulation distance even though the board spent a few thousand dollars on it." (Board Exhibit No. 1.)

"It" refers to Lockport West.

451 The track coach, Mr. Jackson, said it was off in a conversation in September, this year, at East High. Other teachers and I participated in this conversation. I think someone made a statement about some-
452 thing being off, and Mr. Jackson said, "Speaking of things that are off," and then he told us about the track at Lockport West. He said that they had put the curb on the quarter-mile instead of putting it back one foot from the quarter-mile line. I don't think he said it was the wrong way to construct a track. He said he had heard this, but he did not say where. I knew he was the track coach, I took his
453 statement seriously.

I do think high schools should have tracks, athletic
454 fields, varsity tracks and varsity athletic fields. But I believe the facilities erected were other than I had been led to believe would be erected. At no time did I know about a track being erected at Lockport West until it was built. There was nothing about a track in the literature or papers.

I did not have the November 30, 1961 Lockport Herald but in no picture I saw was there a track.

455 Looking at the picture printed in the Lockport Herald, November 30, 1961, I have seen that picture before—probably in different form at the meetings.
456 I see nothing in the picture to indicate there will be a track.

Referring to Board Exhibit No. 1, I said,

"Since there seems to be a problem getting all the facts to the voter on the twice defeated bond issue."

457 I was in error when I spoke of the twice defeated bond issue; I should have said twice defeated tax levy. People commonly, I guess, use tax levy, referendum, bond issue, as if they are synonyms, and actually they are not synonyms.

Referring to Board Exhibit No. 1, I said

"I feel I must say something about the letters and their writers,"

I then referred to a letter by the Board and administration printed in the Lockport Herald stating "teachers' salaries total $1,297,746.00 for one year."

458 The basis for my statement (in Board Exhibit No. 1)

"Now that must have been the total payroll, otherwise the teachers would be getting $10,000.00 a year."

was: I rounded 133 teachers, as stated by Mrs. Lund, to 130 and rounded off the figure to $1,300,000.00. Dividing it out it comes out ten thousand.

I heard Dr. Blatnik say here yesterday that this figure included other than classroom teachers, but the letter does not say that.

I was present at a faculty meeting held at East High on August 31, 1964. I teach at East High. It
459 was a kind of an orientation session. The faculty and administrators of East High were present.

Dr. Blatnik addressed the group and said,

"Any teacher that opposes the referendum should be prepared for the consequences".

I spoke to him about this afterward in the library
460 when he was giving us our teachers handbooks. Mr. Atwater, who testified earlier, also spoke with me and Dr. Blatnik there at that time.

I asked Dr. Blatnik something to the effect of what the consequences were going to be. He said "If you play with fire you may get burned," or "Somebody
461 may get hurt," or something like that. He made it pretty plain that if you had feelings about this you
462 could vote no but you better not oppose it.

Mr. Atwater was in that area getting handbooks; he said he hoped we could get this thing passed.

463 I walked away then. I did not oppose it.

I subsequently talked with Mr. Atwater about this conversation on different occasions, in the cafeteria.
464 I last talked with Mr. Atwater Monday or Tuesday of this week.

Mr. Ligtenberg: Was the statement in the letter mentioned in this conversation?

Mr. Bertani: Objection. Hearsay and impeachment of your own witness.

Mr. Ligtenberg: On the basis of recent Appellate Court rulings holding that when a witness obviously testifies in a different manner than counsel expected him to it may be considered proper to show by other testimony what we expected the witness to say. This is not hearsay.

465 Mr. Anderson: Objection sustained.

Mr. Pickering: I subpoenaed Mr. Atwater because I thought he would testify to the conversation of August 31st.

I read some of the "District 205 Teachers Speak" articles when they came out in the Lockport paper.

446 I am one of the three out of the 133 teachers who did not agree with the committee writing those letters.
467 I did not have anything to do with those articles.

Mr. Ligtenberg: You knew as a matter of fact, however, that these were written by a committee of five or six?

Mr. Pickering: Not originally. When the letters first appeared, the teacher began to say, "Who is writing those letters?" Several appeared during the summer when school was closed.

468 I finally found out who had been on the committee that was writing them. Some teachers did not know who was writing them.

Referring to Board Exhibit No. 1, I said:

"Did you know that those letters had to have the approval of the Superintendent before they could be put in the paper?"

I understood that the publicity committee was to clear this with him for his approval before they were to put them in the paper, that this was the instruc-
469 tion of the executive board to the publicity committee.

The "Handbook For Teachers of Lockport Township High Schools, Compiled August, 1964," that we got on the first day of school had a statement to the effect such publications in regard to the school were to be submitted to a publicity coordinator or building principal. Then they would be forwarded to the Superintendent.

470 I quote from the handbook, page 13:

"In order to prevent any possible embarrassment or misunderstanding, check the material with the

building principal before releasing it. Any information which an individual feels should be published in the local papers should be submitted in
471 triplicate to the publicity coordinator."

I understood it would be forwarded to the Superintendent.

I did not follow that procedure in regard to Board Exhibit No. 1. I was fired subsequent to writing the letter.

In Board Exhibit No. 1, I said:

"In last week's paper, the letter, written by a few uninformed teachers, threatened to close the school cafeteria and fire its personnel."

472 That was based on the article printed on September 17th which said:

473 "Will the board, if the referendum fails, cut the lunch program with all of its personnel?"

I heard here today that the school cafeteria in this district lost money. It is my opinion that a cafeteria should operate on a non-profit basis. It neither loses money nor makes money.

474 The statement in Board Exhibit No. 1,

"If the cafeteria is losing money, then the board should not be packing free lunches for athletes on days of athletic contests."

is my opinion.

I knew the board was giving free lunches because I passed them out when I took the baseball team on an away game about two or three years ago. The
475 players did not pay me for the lunches.

I also said:

"Whatever the case, the taxpayer's child should only have to pay about thirty cents for his lunch instead of thirty-five cents to pay for free lunches for the athletes."

The lunches I handed out consisted of two ham sandwiches, fruit and milk. There were about 30 players on that one team; and there were other teams; and that was just one day. It would have been quite an expense just to feed those fellows for one day, and this goes on every time there is an away game, where
476 it is necessary.

Mr. Bertani: Objection. Conjecture.

Chairman Anderson: Objection sustained.

477 The Witness: In Board Exhibit No. 1, I said:

"In a reply to this letter your Board and administration will probably state that these lunches are payed for from receipts from the games."

Yesterday the testimony here was that the lunches were paid out of the athletic funds.

I then continued with the statement:

"But $20,000.00 in receipts doesn't pay for the $200,000.00 a year they have been spending on var-
478 sity sports while neglecting the wants of teachers."

The $20,000.00 is the approximate amount of receipts from football games.

There are many neglected wants of teachers in this district. I felt very strongly about the gas line leak in the science area of the building. Notification to proper authorities had been made, and it was quite some time before it was finally taken care of.

More than a year ago Mr. Pryor told me there was a lot of gas in the room. Later on the same day or week he told me he had reported it. It seems to me that was several years ago, and it was repaired just last summer.

This year, by requisition, I asked for a Webster's dictionary for my room. I didn't get it. I felt this elementary need was neglected.

Mr. Ligtenberg: Do you have any computation that indicates the expenditure in any one year of any sum approaching $200,000.00?

Mr. Pickering: Since this has been challenged I have made an attempt to establish this figure for a year, yes. I have a list here giving sources, since it is apparent that I needed to establish this figure. Some of the sources are Board minutes, the construction account book, issues of the Lockport Herald. The expenditure items for varsity sports or athletics are as follows:

Source, financial statement. Date 7/62 through 6/63. Account No. 5105. Purpose, or to whom, athletics. Amount, $17,238.85.

Then, Board minutes, 9/25/62, page 2446. Item, bleachers, West High gym. Amount, $15,558.00.

Board minutes, 10/13/62, page 2451. Account No. 507.901. Lime white, $22.00.

Board minutes, 10/13/62. Grid write, $53.00.

Construction account book, dated 4/15/63.

Account No. 601, athletics. Traffic cone, $68.00. 5/10/63, account No. 601.303.

Football supplies, West High, $190.00.

Construction account book, 6/3/63. Account No. 601.104. Football field mowed and swept $137.00.

Construction account book, 6/3/63. Account No. 601.303. Athletic equipment, West High, $10.00.

Construction account book, 6/3/63. Account No. 601.303. Athletic equipment, West High, $38.52.

485 Board minutes, 7/25/62, page 2419. E. H. Meyerhoffer, revised bid on Alternate 3, including tennis court, football field, $111,558.00.

486 On that same item I made an allowance there, since the architect was paid. Five percent of that particular item for the architect would be $5,577.90.

The salary list in the Board office totaled $11,150.00 in extracurricular salaries for that year, which includes the salaries for coaches, athletic directors, ticket sellers, ticket takers, the activity manager which manages the selling and distribution of tickets, the G.A.A. cheer leader, which is involved with varsity sports, and so on.

Then I found a difficulty because not all of the information in regard to disbursements were in the Board office. Expenditures from the athletic injury fund records I found in another room in the building.

487 I was not permitted to look at these records. I was told by the woman who has charge of them that the athletic injury fund paid out $89.00 in the school year 1962-63.

Also from records not in the Board office, the disbursement for insurance paid for athletes for 1962-63 totaled $3,000.00.

Now take the Board minutes:

Transportation, athletics:

Board minutes 6/63, $1,422.50.
Board minutes 5/63, $681.50.
Board minutes 4/63, $677.50.
488 Board minutes 3/63, $768.50.
Board minutes 2/63, $601.48.
Board minutes 12/62, $425.00.
Board minutes 11/62, $775.00.
Board minutes 10/62, $600.00.

489 Board minutes, 6/63. Account No. 507.901.
Purpose, grid white. Amount, $100.00.

Board minutes, 9/13/62. Account No. 507.901.
Repair of light poles, $1,096.00.

Lockport Herald, 8/16/62 (I was not able to find this item immediately in the Board minutes)
Gym scoreboard, $639.00.

Lockport Herald, 8/16/62.
Outdoor scoreboard, $2,070.50.

Continuing at this point, I was unable to establish various things directly from the records.

However, the football games require lights which cost $20.00 per hour to operate. I was told this by Esther Geddes in the office.

490 $20.00 per hour times 10 nights of practice at 2 hours a night is $400.00 for practice.

5 night games times 4 hours per game times $20.00 is $400.00.

Two policemen at each of the games at $10.00 a piece is $100.00. Their cost for 8 basketball games is $160.00.

Janitors for the games approximated $260.00.

At this point, I still have many things to complete on this list, such as the cost of the equipment storage
491 building, the cost of the extra parking area for athletics, the cost of electricity, water, heat and maintenance for games and practice at wrestling, swimming, basketball, track meets, baseball, tennis; phone calls for the athletic director, athletic equipment purchased from the educational or construction fund; amounts paid out of the gate receipts, portion of the athletic
491 director's salary, for he was not teaching a full load. There is more to be established on cost of the maintenance of the athletic fields.

This is my sincere and honest effort to establish a $200,000.00 figure. With more time we can dig these
492 things out.

The figures given thus far total over $170,000.

Mr. Bertani: $111,000.00 of which is some contract item.

The Witness: An item that was spent on athletics, equipment, and grounds.

Referring to Board Exhibit No. 1, I said:

"You see we don't need an increase in the transportation tax unless the voters want to keep paying $50,000.00 or more a year to transport athletes home after practice and to away games, and etc."

493 The basis for that statement was the source of tax money for transportation.

In 1962-1963 the tax money alone was $39,000.00. State aid made it near $50,000.00. In 1964 there would be no problem coming up with $50,000.00 in money for the transportation. If the voters want to spend more than $50,000.00 a year, then they would have to pass this tax levy.

494 As testified yesterday, the total sum paid for transportation has been over $50,000.00 each year of the last five.

I then said in Board Exhibit No. 1:

"The rest of the $200,000.00 is made up in coaches salaries, athletic directors salaries, baseball pitch-
495 ing machines, sodded football fields, and thousands of dollars for other sports equipment."

I included these items in my previous lengthy detailed statement about athletic cost figures.

496 At least 20 teachers are involved in part time coaching, apart from their regular teaching—although there may be some duplication. I felt coaching could be allocated to the athletic expense.

497 There are baseball pitching machines in this district.

West High's football field was probably sodded be-
498 fore the school year of 1963.

I feel my examination of the records revealed thousands of dollars are being spent on other sports equipment.

I then said,

"To sod football fields on borrowed money and then not be able to pay teachers salaries is getting the cart before the horse."

West High football field was sodded from the bond issue and therefore on borrowed money. The Central High field was sodded at a time at which the
499 board had issued $500,000 in tax warrants; so at the time it was sodded they had borrowed money.

I was present at a board meeting last year when Mr. Anderson made the statement that by about Janu-

ary of 1965 they might not be able to pay the teachers. At the May board meeting I asked him how it looked in regard to the teachers being paid for the 1964-65 school year. He said he didn't think it would be January, it might be a little later, like March, that we might not get paid.

500 I am sure they would pay us in some way—perhaps script or teachers' orders. He may have had in mind the sale of tax anticipation warrants. At the very lease, I inferred from that that they would have to borrow money in order to pay teachers' salaries. In my opinion, when this prospect faced the district in May, sodding football fields in the summer was getting the cart before the horse.

501 I teach at East High in one of the classrooms with no doors. When the science department saw the plans, the members of the department voted unanimously to inform the Board or the administration that we objected to no doors in the science area. Mr. Pryor was head of that department.

502 There is a plant room without sunlight. In my opinion, it would be a better plant room with sunlight, for certain plants depend on photoperiodicity in order to thrive and come to full maturity.

503 As was testified to by others, there is a first aid treatment room without water.

In Board Exhibit No. 1, I said:

"A part of the side walk in front of the buillding has already collapsed."

504 Two sections at the entranceway, each one about a 10 by 10 area, at East High collapsed. It was repaired in a couple of weeks.

I also said in Board Exhibit No. 1:

"Once again the board must have forgotten they were going to spend $3,200,000 on the West building and $2,300,000 on the East building."

505 I got those figures from the citizens advisory meetings and the Lockport Herald.

I said in Board Exhibit No. 1:

"As I see it the bond issue is a fight between the Board of Education that is trying to push tax-supported athletics down our throats with education,
506 and a public that has mixed emotions about both of these items because they feel they are already paying enough taxes, and simply doesn't know who to trust with any more tax money."

The "bond issue" here should have been "tax levy".
507 The second bond issue passed by 150 votes out of roughly 4,000 votes. It was a close bond issue. The first tax levy failed by about four to one, and the second failed by about two to one.

508 I felt the public's lack of confidence in what the Board was doing was based on people saying they thought they were spending too much on athletics.

I said in Board Exhibit No. 1:

"I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration."

509 Mr. Ligtenberg: Now, did you find that even though you sheltered yourself or attempted to as a citizen, taxpayer and voter you nevertheless were given notice of dismissal for writing this letter?

Mr. Bertani: Objection. It was not because he wrote a letter that he was dismissed. It was the content of the letter.

Mr. Anderson: Objection sustained.

510 Mr. Pickering: I said, finally, in Board Exhibit No. 1:

"Do you really know what goes on behind those stone walls at the high school?"

At the time I wrote the letter, I knew that planning and executive sessions were being held by the Board.

512 *Cross Examination by Mr. Bertani.*

513 The correct vote on the first bond issue was a yes vote of 2,545 and a no vote of 2,690.

514 The figures on the second bond issue in the Lockport Herald of December 7, 1961 are 3,811 for, and 2,374 against, or a margin of victory of 1,437.

I worked on the first bond issue of $4,800,000.00 which provided for a two-year school on the west and
515 a two-year school on the east.

I knew that program was defeated. I knew in that program there wasn't to be an athletic field for variety sports, an auditorium, or swimming pools.

I worked on the second bond issue, the successful one, of $5,500,000.00.

516 This piece of literature seems to be similar to the picture that was in the newspaper. I did not hand that literature out. It is my interpretation that there appears to be something that could be used as a practice football field on it.

517 I did not know there was going to be an auditorium in the West Side High school in the successful bond issue.

518 In the letter I said:

"I am not saying the school shouldn't have these facilities, because I think they should, but promises are promises or are they?"

519 Mr. Bertani: Where in the program is there a promise by the Board of Education of this school district that there will not be an auditorium in the West Side High School?

The Witness: Where is there a promise that there will be?

520 I don't think Teacher's Exhibit No. 5 or Teacher's Exhibit No. 6 state there will not be an auditorium.

I have been a teacher for some time prior to 1961.

521 There are differences between a two and a four year high school.

The preliminary plans that were available to us at the time of this program were simply circulars and the pictures, rough drawings, of what it would look like, not what would be in it.

522 I did not have access to the preliminary or working plans. Therefore, I could not have taken the time to look at them before writing the letter.

523 I asked Dr. Blatnik to see the plans in regard to exactly what was going to be in the building, but they weren't available yet. I still had not seen the blueprints of the building when I wrote the letter.

As to the statement "It", the track, "must have fell out of the sky," it could have come from the plans if 524 they contained it. I heard the architect testify.

I think there has been a deviation in regard to the swimming pool, although none was promised nor is 525 there one. The deviation is that the Board requested

an alternate bid on a swimming pool. I didn't say that in my letter. I considered it a deviation because the Board specifically stated there would not be a swimming pool. Further, the minutes show that they paid the architect for his services in preparing preliminary plans for a swimming pool.

527 Teacher's Exhibit No. 5, the inside page, says:

"In the interests of economy, certain items that are desirable but not absolutely essential, such as a swimming pool, will not be included in the basic
528 plan—but there will be a provision for such features to be added at a later date."

I distributed this circular which says that the provision would be added at a later date.

529 I did not find anywhere in the newspapers I read dealing with the second bond issue that they said there would not be an auditorium.

530 Mr. Bertani: What is the basis for your innuendo about the Board in this letter that they broke promises in this regard?

The Witness: On the first bond issue they specifically stated there would not be, and in the second bond issue they did not state there would be, in the material that I had, and the newspapers I read.

531 It is my opinion, if you promise something, then you change your mind and do something else without informing all concerned that you have changed your mind about this; by changing their mind I mean the first time they said there would not be one, and the second time, even though they didn't say there was going to be one, it seems to me they should have stated there would be one.

532 The source of my information about the track being not quite regulation was a statement of the track coach at Central High School that he had heard it from someone else. I do not recall checking it out. There was little time between hearing it and writing the letter.

534 In regard to my statement about the letter signed Board of Administration, which stated teachers' salaries alone were $1,297,746.00, I used 130 teachers in my division.

Mr. Bertani: What I am saying is that for the
535 year 1964-1965 there are 147 teachers on the faculty, and the $1,297,746.00 figure comes from the 1964-65 budget.

The Witness: You can budget for salaries but you can't say what the salaries are until they are paid.

536 In regard to Board Exhibit No. 1, I said:

"However, this shows their 'Stop at Nothing' attitude."

In regard to that, if they, as they have admitted they have, used a figure that was incorrect for the purpose of persuading the voters to pass a tax levy, it seems to me that it speaks for itself. It is not an accusa-
537 tion.

I remember Dr. Blatnik saying:

"Any teacher that opposes the referendum should be prepared for the consequences."

538 I don't recall the exact statement he made before that. I wrote down his exact words in the sentence after that.

He said:

539 "Now, this doesn't mean you can't vote no."

I do not have them with me here now, but I did have them when I wrote the letter. I do not recall the exact words in his next statement.

540 I am saying I know exactly two statements he said. Therefore, I will not admit to saying that I didn't know what he was talking about.

I also remember another direct statement Dr. Blatnik said on that day:

"You may go over there and pick up your teacher's manual."

541 I am sure of that.

I considered the statement:

"Any teacher that opposes the referendum should be prepared for the consequences"

if not a threat, at least intimidation.

The statement in my letter:

"Threats, take something away, these are insults to voters in a free society."

refers to the threats made in regard to District 205
542 letters of closing the cafeteria, and eliminating personnel.

545 I think the problem here is what I was referring to when I said "Threats" was different than the fact that it happens to appear in a certain part of the paper. You are trying to connect the two simply because they are there, and you are also trying to interpret for me what I meant by "Threats".

546 District 205 teachers threatened to close the cafeteria. Their letter implied the Board was going to.

547 Mr. Bertani: Didn't the letter say that one of the things the Board might have to do if the bond referendum didn't pass—I am making your same mistake, Mr. Pickering;

548 The Witness: In Board Exhibit No. 1, I said:

"In last week's paper, the letter, written by a few uninformed teachers, threatened to close the school cafeteria and fire its personnel."

The source was the statement in Board Exhibit No. 13:

"Will the Board, if the referendum fails, cut the lunch program with all of its personnel?"

The letter, threatened, not the teachers, reading from Board Exhibit No. 1.

549 I was not a member of the Lockport Teachers Organization when it represented 130 out of 133 teachers.

550 I said in Board Exhibit No. 1:

"In fact, many teachers didn't even know who was writing them."

I testified on direct that I talked to a teacher downtown who asked me who was writing the letters.

551 There were others I contacted during the summer. One was Mr. Earl Snyder. I cannot recall the names of the others.

The basis for my statement in Board Exhibit No. 1:

"Did you know that those letters had to have the approval of the Superintendent before they could be put in the paper?"

was at the bottom of page 12 and the top of page 13 of the teachers manual and the fact Dr. Charles

552 Bieseman, president of the organization, told me the
553 letters were to be submitted to the Superintendent for his approval. I am not sure he said they had to be submitted.

555 I said in Board Exhibit No. 1:

"That's the kind of Totalitarianism teachers live in at the high school, and your children go to school in."

557 I would like to stress I did not state that the whole system was totalitarianism, but this was only a kind of it. In regard to kind, this referred to the threats that had been made in regard to cutting the program, to the Superintendent in regard to consequences if the tax levy failed. I can see how you, and possibly any other reader, could also see it might refer to the fact, according to my letter, that teachers couldn't freely put letters in a newspaper.

558 The teachers writing the articles were uninformed in the sense only that they had suggested closing a cafeteria which should operate without loss or profit. Why close something that is not a cost? I have now heard the cafeteria loses money. At the time I wrote
561 the letter, I wasn't sure the cafeteria was losing money; other teachers had said it was.

562 The information used in the letter did not come to me because I was a school teacher. Any interested citizen could dig out the same facts by attending Board meetings, reading the paper, and talking to other teachers.

563 In regard to the 30 lunches packed for baseball players a few years ago, I don't know if the athletic department paid for them. If the cafeteria is losing money and they are supplying lunches to the athletes

then a portion of the cost of those lunches must be also added to the loss and therefore added to the bill for athletics.

564 At the time I wrote the letter, I wasn't sure the cafeteria was losing money; I had heard it was. I said, in Board Exhibit No. 1:

"Whatever the case, the taxpayer's child should only have to pay about thirty cents for his lunch instead of thirty-five cents to pay for free lunches for the athletes."

565 Mr. Bertani: Did you intend to say when you wrote Board Exhibit No. 1, that the reason students in this school district are paying 35 cents instead of 30 cents for their lunches is because this Board is giving lunches to athletes?

The Witness: Whether the students pay for the lunch or their father as a taxpayer pays for the lunch, through tax money given to athletics it is still money coming from taxpayers and therefore still pay for the lunches.

Mr. Bertani: I ask that the answer be stricken as not being responsive to the question.

Mr. Anderson: It may be stricken.

Mr. Ligtenberg: I enter an objection to that answer being stricken—it is responsive.

566 Mr. Anderson: The ruling still stands.

568 The Witness: The cost of those lunches, on a rough basis, depending on the number of lunches, the total cost of the lunches for athletes, taken out of the total cost of the lunches for students per meal served, would get into this area.

569 All the coaches of varsity sports except the athletic director teach a full-time schedule as far as I know. It is a portion of only the director's basic salary that I feel should be attributed to athletics.

570 In Board minutes, 7/25/62, page 2419 and supplements thereto, it shows E. H. Meyerhoffer bid on Alternate 3 was revised from some figure I don't recall, but it was a higher figure, revised down to $111,558.00.

571 As far as I could determine, Alternate 3 was spent for the tennis courts at West High which are used primarily for varsity sports and occasionally by the P.E. classes. To my knowledge, I cannot play there on Saturday. I never tried.

572 Alternate 3 also includes the spectator area and the football field used for West Side High School home games, plus all the equipment, light poles, bleachers and seating. That permanent improvement is part of Alternate 3.

573 The football field is not used for anything but games; the team goes somewhere else to practice.

The land for the athletic field was not purchased out of this bid.

What else are athletic salaries for than for varsity
574 sports? I know of no intramural coaches that are paid. We do have freshmen coaches, but haven't you heard of freshmen varsity basketball?

The public is providing $50,000.00 for transportation through taxes. If they want to provide more they will have to pass the tax levy.

That is what I meant when I said in Board Exhibit No. 1:

"You see we don't need an increase in the trans-
575 portation tax unless the voters want to keep paying $50,000.00 or more a year to transport athletes home after practice and to away games, and etc."

575 All of that refers to transportation. The district receives this by levying a two-cent transportation tax on the assessed valuation and state aid. I wanted to tell
576 the public in that sentence in the letter that if they didn't want to spend more than $50,000.00 a year on transportation we needn't raise the levy.

I then referred to the rest of the $200,000.00. By that I meant a part of the money spent on transporta-
577 tion would be added to the $200,000.00. I did not intend to inform the pubic that the Board was spending $50,000.00 to transport athletes, for they weren't spending that much on that. They were spending more than that on total transportation.

578 This morning we were denied the privilege of establishing that tax anticipation warrants were issued out of the building fund.

Mr. Bertani: That was because you were asking for something subsequent to the date in question.

579 The Witness: When I missed my pay check, it was not due to funds being exhausted.

580 With one exception I got a check for every period I worked. I worked as dance chaperone until the time of this letter; I feel I have money coming for that job. Other than that I have always received a check which was negotiated properly at a bank and cash obtained therefor.

581 The Board has not sodded football fields when it was unable to pay teachers from regular funds, but

they have been paying them, as I understand it, from borrowed money.

582 I got my tax bills in September or October this year.

584 I don't know when the first installment was due, but the second installment was due thirty days after the first one..

The basis for my statement in Board Exhibit No. 1:

"The taxpayers were really taken to the cleaners."

was the fact I found at East High no doors on many of the classrooms, no sunlight in the plant room, no water in one of the first aid rooms, and sloppy-looking
585 terrazzo floors. The building does not keep out the dirt that blows off the field. There may be some outside ground work to be completed, but the Board said they accepted it.

586 I assume the Board meant complete acceptance.

587 Whoever would give the taxpayers a building that had faults in it took the taxpayers to the cleaners.

Mr. Bertani: Was it the Board of Education of 205?

Mr. Ligtenberg: I object to that. He is again try-
588 ing to inquire into the mind of a person rather than into what the letter says. I think this statement about taxpayers being taken to the cleaners is fair comment for which no one can possibly be held to account. This is inquiring into his reasons for making a statement that he had a right to make with or without reason.

590 The Witness: The science teachers saw the final plans with classrooms without doors. We did object
591 to those plans. We had a right to object as taxpayers and citizens.

592 In Board Exhibit No. 1, I said:

> "I must sign this letter as a citizen and taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration."

592 Besides the teachers' manual, pages 12 and 13, and the conversation I had with the president of the organization, the basis for that statement is in regard
593 to Herb Van Deven, who also wrote in the local paper, back in 1958. He told me he was told not to write any more for the paper. I think we might also refer to instances where teachers have got themselves in hot water because of things they have said, for instance, at local P.T.A. meetings,

594 In the light of these events, would you not consider it risky to express yourself as a teacher?

Mr. Bertani: I am asking the questions, not you, sir.

595 Mr. Anderson: That answer is stricken.

Mr. Ligtenberg: Objection, as being responsive.

Mr. Anderson: Objection overruled.

596 The Witness: When I said in Board Exhibit No. 1 that the taxpayer "simply doesn't know who to trust with any more tax money," I do not think it was a misuse of tax funds to build an auditorium. But to use it without telling the people you were going to use it for that purpose, or to use it to do anything in which you didn't tell the people what you were going to do with it, that is a misuse. That is the basis of my statement.

597 *Redirect Examination by Mr. Ligtenberg.*

I own two pieces of real estate in this school district: Rural Route 2, Gouger Road; and 621 East 17th Street, Lockport, Illinois. I paid taxes on these this year and in previous years.

(Witness excused.)

598 Mr. Anderson: Both sides have rested.

599 Mr. Ligtenberg: I move on behalf of Marvin L. Pickering that the Board of Education dismiss the charges that have been made and quash the notice of dismissal that has been served upon the teacher and that all charges be withdrawn that have been made in this connection, on the ground that the evidence on both sides as presented here has failed to make substantial proof in support of said charges.

The warrantedness of the statements made in this 601 letter were not in issue. They should not be regarded as the final touchstone of this decision.

Mr. Bertani: I believe the charges have been substantially proved.

604 Mr. Anderson: The Board will render its decision at 7:30 Wednesday night, December 2nd.
stantial proof in support of said charges.

606 (The public hearing was thereupon adjourned to Wednesday, the 2nd day of December, A. D. 1964, at the hour of 7:30 o'clock P. M., in the library of Lockport Central High School.)

LIGTENBERG, GOEBEL & DEJONG,

Attorneys for Plaintiff-Appellant.

JOHN LIGTENBERG,
ANDREW LEAHY,

Of Counsel.

IN THE

Supreme Court of Illinois

NOVEMBER TERM, A.D. 1966

MARVIN L. PICKERING,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205 WILL COUNTY, ILLINOIS,

Defendant-Appellee.

Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois.

Honorable Michael A. Orenic, Presiding.

ADDITIONAL ABSTRACT OF RECORD

Page of Record

ERNEST O. MOORE, JR., called as a witness by the Defendant Board of Education, having been sworn, testified:

78 That Lockport West and Lockport East high schools were constructed in accordance with the original preliminary and working drawings with modifications of only a very minor nature.

90, 91 That since the district was running slightly over its budget, he recommended and it was decided to use artificial light in the place of skylights; that there

was nothing unusual or difficult about growing plants with artificial light, and that in fact, it was frequently done at university research projects; and that plants do not distinguish between sunlight and artificial light.

91, 92 That the basic function of the first aid room complex was to take care of the student who might become ill until he could be taken home or make a recovery of his own during a short interval, or in an emergency, he might be brought to this suite of rooms, which consists of an office and two resting rooms, one for boys and one for girls; that each of the resting rooms had toilet facilities, consisting of a water closet and a lavatory.

Cross Examination by Mr. Ligtenberg.

111, 112 That Lockport East High School has no auditorium, but that it does have two areas that would serve quite well for meetings of approximately 150 students each.

115 That the track at Lockport West High School measures 440 yards measured at one foot into the track from the inside curb; that I have heard no statements made to the effect that the Lockport West track measures only 440 yards at the inside curb; and that if such statements were made they would not be cor-
116 rect, that the distance to be run is the factor that makes a track regulation or not, and not where the start and stop of the race occurs with reference to any point on the track; that there is a variation of places on the track where you can start and stop a race, but the important factor is the proper distance between the starting and finishing point.

CHARLES W. VOIGHTS, called as a witness by the Defendant, Board of Education, having been sworn, testified:

157 That athletic receipts are transferred to the athletic injury fund only in the amount necessary to pay for the expenditures that are needed in that fund.

WILLIAM H. BLATNIK, called as a witness by the Defendant, Board of Education, having been sworn, testified:

224 That there have been no deviations from the original promises made by the Board of Education in regard to the building program and that the statements in the Pickering letter that there were such deviations are false. That the schools were built according to the plans and specifications of the architect.

234 That lunches would be supplied to athletes for away games if the games were some distance and the athlete would be forced to miss a meal.

242 It is a false statement that the district is spending $50,000 or more a year to transport athletes home after practice and to away games, and etc., as is accused in the Pickering letter.

WILLIAM T. JACKSON, called as a witness by Marvin L. Pickering, the Plaintiff, having been duly sworn, testified:

380 I had heard that the track was laid out with the curb used as the measurement for the 440 yards. This

385 was the scuttlebutt. I do not know whether or not this was true.

Cross Examination by Mr. Bertani.

396 That the scuttlebutt that he had heard and repeated in the teachers' lounge was scuttlebutt directed to the Lockport West track and not the Lockport Central track.

LEE E. ATWATER, called as a witness by Marvin L. Pickering, the Plaintiff, having been sworn, testified:

404 I don't think that Dr. Blatnik said any way they had to vote. I think that was left completely to their choice.

PHILLIP POLLEY, called as a witness by Marvin L. Pickering, the Plaintiff, having been sworn, testified:

430 However, on thinking it over and on talking to other people about that, I am not sure that he meant merely those who opposed it or any teacher that would suffer not being able to obtain things for his classroom because the money would not be available.

MARVIN LORAIN PICKERING, the Plaintiff, herein appearing as a witness on his own behalf, having been sworn, testified:

503 One of the rooms in the first aid suit is without water in it.

Cross Examination by Mr. Bertani.

519, 520 When asked on cross examination where in the successful bond referendum building program were there any promises by the Board of Education that there would not be an auditorium and athletic facilities for varsity sports at Lockport West, the witness answered that there were no promises therein that there would be.

557 The witness testified that his statement in his letter that 'that's the kind of totalitarianism teachers live in at the high school, and your children go to school in,' did not refer to the necessity of teachers getting the approval of Dr. Blatnik to publish letters, but referred to the threats made in the District 205 teachers' letter that various things would be cut. However, he admitted that he could see how it could also refer to Dr. Blatnik and any reader might possibly think so too.

559, 560 The witness testified that his reference to the Board's stop at nothing attitude in his letter was to the Board's use of incorrect figures about teachers' salaries for the purpose of persuading voters to pass the tax rate increase referendum and that those figures were false and that this was the type of forcing something onto the people for a purpose and using false figures in the means.

585, 586 Under close cross examination, the witness admitted that he did not know that the outside grounds of Lockport East High school were still being worked on and that you could accept the building with reservations that minor defects be repaired by the contractor.

586-590 After frequent questions and unresponsive answers thereto as to who took the taxpayers to the cleaners, the witness finally stated that whoever gave the taxpayers the building that had the faults in it took the taxpayers to the cleaners.

Respectfully submitted,

JOHN VERKLAN,
LOUIS R. BERTANI,
Attorneys for Defendant-Appellee.

OPINION

OF THE SUPREME COURT OF ILLINOIS

14 Docket No. 40038—Agenda 36—November, 1966. Marvin L. Pickering, Appellant, v. Board of Education of Township High School District 205, Appellee.

Mr. Justice Klingbiel delivered the opinion of the court:

Marvin L. Pickering, a teacher in Township High School District 205, Will County, was dismissed from his position by the Board of Education. He brought proceedings for reinstatement but after a hearing the board confirmed the dismissal. On review the circuit court affirmed the board's decision, and plaintiff Pickering has taken further appeal directly to this court, claiming a constitutional question is involved.

He was dismissed after publishing a letter in the local newspaper criticizing the school board and the district superintendent of schools. On February 25, 1961, the voters of the school district turned down a proposal for the issuance of $4,875,000 in school building bonds to erect two new schools to accommodate freshmen and sophomores only to feed existing Lockport Central High School, which was then to accommodate juniors and seniors only. Upon defeat, this program was discarded. On December 2, 1961, the voters approved the issuance of such bonds in the amount of $5,500,000 to erect two new schools, one (Lockport East) to accommodate freshmen and sophomores only, which was to operate as a feeder school to Lockport Central, and the other (Lockport West) to be a full four year high school. Existing Lockport Central was then to accommodate juniors and seniors only on the East side of the district. The two programs were distinct and materially different in approach to the same

purpose of providing all children of the district with a good common school education.

The letter published by the plaintiff reads as follows:

"Dear Editor:

I enjoyed reading the back issues of your paper which you loaned to me. Perhaps others would enjoy reading them in order to see just how far the two new high schools have deviated from the original promises by the Board of Education. First, let me state that I am referring to the February thru November, 1961 issues of your paper, so that it can be checked.

"One statement in your paper declared that swimming pools, athletic fields, and auditoriums had been left out of the program. They may have been left out but they got put back in very quickly because Lockport West has both an auditorium and athletic field. In fact, Lockport West has a better athletic field than Lockport Central. It has a track that isn't quite regulation distance even though the board spent a few thousand dollars on it. Whose fault is that? Oh, I forgot, it wasn't supposed to be there in the first place. It must have fallen out of the sky. Such responsibility has been touched on in other letters but it seems one just can't help noticing it. I am not saying the school shouldn't have these facilities, because I think they should, but promises are promises, or are they?

"Since there seems to be a problem getting all the facts to the voter on the twice defeated bond issue, many letters have been written to this paper and probably more will follow. I feel I must say something about the letters and their writers. Many of these letters did not give the whole story. Letters by your

Board and Administration have stated that teachers' salaries total $1,297,746 for one year. Now that must have been the total payroll, otherwise the teachers would be getting $10,000 a year. I teach at the high school and I know this just isn't the case. However, this shows their 'stop at nothing' attitude. To illustrate further, do you know that the superintendent told the teachers, and I quote, 'Any teacher that opposes the referendum should be prepared for the consequences.' I think this gets at the reason we have probelms passing bond issues. Threats take something away; these are insults to voters in a free society. We should try to sell a program on its merits, if it has any.

"Remember those letters entitled 'District 205 Teachers Speak', I think the voters should know that those letters have been written and agreed to by only five or six teachers, not 98% of the teachers in the high school. In fact, many teachers didn't even know who was writing them. Did you know that those letters had to have the approval of the superintendent before they could be put in the paper? That's the kind of totalitarianism teachers live in at the high school, and your children go to school in.

"In last week's paper, the letter written by a few uninformed teachers threatened to close the school cafeteria and fire its personnel. This is ridiculous and insults the intelligence of the voter because properly managed school cafeterias do not cost the school district any money. If the cafeteria is losing money, then the board should not be packing free lunchs for athletes on days of athletic contests. Whatever the case, the taxpayer's child should only have to pay about 30¢ for his lunch instead of 35¢ to pay for free
16 lunches for the athletes.

"In a reply to this letter your Board of Administration will probably state that these lunches are paid for from receipts from the games. But $20,000 in receipts doesn't pay for the $200,000 a year they have been spending on varsity sports while neglecting the wants of teachers.

"You see we don't need an increase in the transportation tax unless the voters want to keep paying $50,000 or more a year to transport athletes home after practice and to away games, etc. Rest of the $200,000 is made up in coaches' salaries, athletic directors' salaries, baseball pitching machines, sodded football fields, and thousands of dollars for other sports equipment.

"These things are all right, provided we have enough money for them. To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse.

"If these things aren't enough for you, look at East High. No door on many of the classrooms, a plant room without any sunlight, no water in a first aid treatment room, are just a few of many things. The taxpayers were really taken to the cleaners. A part of the sidewalk in front of the building has already collapsed. Maybe Mr. Hess would be interested to know that we need blinds on the windows in that building also.

"Once again, the board must have forgotten they were going to spend $3,200,000 on the West building and $2,300,000 on the East building.

"As I see it, the bond issue is a fight between the Board of Education that is trying to push tax-supported athletics down our throats with education, and a public that has mixed emotions about both of these items because they feel they are already paying

enough taxes, and simply don't know whom to trust with any more tax money.

"I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration. Do you really know what goes on behind those stone walls at the high school? Respectfully, Marvin L. Pickering."

The evidence is that the board constructed the two new schools in accordance with its original plans and specifications and that there were only a few deviations of a minor nature, that the Lockport West track is regulation; and that an auditorium and athletic field for Lockport West were at all times included in such
47 plans and specifications and the program, as such, presented to the public. Architect Moore testified that the buildings were constructed in accordance with the original working drawings which were taken from the preliminary drawings with modifications of only a very minor nature and that Lockport West was to have an auditorium and athletic field from the beginning. Superintendent Blatnik testified to the same effect and that the accusations in plaintiff's letter were false. Architect Moore testified that the Lockport West track was regulation.

Plaintiff testified that he did not look at the original plans and working drawings of Lockport West because he did not have access to them. He further testified that he worked for the passage of each referendum as submitted to the voters and that he reasoned that since the board of education definitely promised that there would be no swimming pools, athletic fields and auditoriums in the building program under the first referendum, and since it had not mentioned anything about them in the second referendum, at least according to his knowledge, that the board of education, by its si-

lence in regard thereto, in effect promised that there would be no such facilities if the second referendum passed. This was his only basis for these accusations. There was no evidence of a promise by the board of education that there would be no auditorium or varsity sports facilities at Lockport West under the second referendum.

As to statements in the third paragraph of plaintiff's letter the superintendent testified that he authored the statements about teachers' salaries with board approval and his statement about the matter was correct and not false. He testified that he obtained the figure from the budget for the fiscal year 1964-1965 under the heading instructional salaries and explained what the figures represented. The purpose of the educational fund tax-rate-increase referendum was to secure additional funds for the district so that it could pay for additional salaries of new teachers due to the building of two new schools. It had nothing to do with the number of teachers previously employed by the district. He further testified that the figures about teachers' salaries were correct, and there was testimony that the statement attributed to him was not a threat but was merely meant to suggest that teachers would suffer by not being able to obtain things for their classrooms because money would not be available.

As to statements in the fourth paragraph of plaintiff's letter in regard to the necessity of prior approval
18 by the superintendent before district 205 teachers' letters could be published, teacher Florence Lund, who was the chairman of the committee that wrote the letters, testified that there was no such condition precedent to the publication of the letters. And, Superintendent Blatnik testified that teachers did not have to

have his approval before letters could be published and that such a statement by plaintiff in his letter was false.

Superintendent Blatnik denied plaintiff's charge that because the board was giving free lunches to athletes on days of athletic contests each taxpayer's child had to pay about thirty-five cents for his lunch instead of thirty cents in order to make up the cost for free lunches of athletes. He explained that athletes did get a small lunch of a sandwich, an apple or a candy bar and milk when they would have to miss supper due to an away game that required considerable travel and that these lunches were paid for at the cafeteria out of the athletic fund from gate receipts. They were only fed thus on trips for games away from home where because of traveling time, it was difficult for them to eat elsewhere. He testified that the loss incurred for operating the cafeterias of both schools for the school year 1963-1964 was $19,-464.56, and that the office of Superintendent of Public Instruction attributed this loss to the cost of food.

As to the accusation that the board spent $200,000 a year for varsity sports while neglecting the wants of teachers, the district's auditor testified that it was not true that the district spends $200,000 a year on varsity sports. He said that for the school year 1963-1964, as indicated by the board exhibit No. 26 admitted into evidence, the board spent $49,554 on varsity athletics broken down as follows: $29,937 for actual athletic expenditures such as equipment, uniforms, etc.; $10,142 for transportation and $9,475 for extracurricular salaries for coaches, etc. Superintendent Blatnik categorically stated that the accusation was false. He testified that the wants of teachers have not been neglected; that salary schedules have

consistently risen over the past nine years; that inspectors from the office of the State Superintendent of Public Instruction have never indicated that the wants of teachers were neglected; that there have always been on file more requests for jobs than job openings; that the district had a turnover of about six teachers a year who left for other positions out of a staff average of 132; that he has not been able to give teachers everything they wanted.

Plaintiff's testimony relative to the $200,000 figure
19 showed a different approach in arriving at that figure. In his figure, included were $111,588 for the new tennis court and football field at Lockport West to be paid out of the construction fund from the sale of bonds. Also included were the costs of bleachers for the Lockport West athletic field and a proportionate amount of the architect's fee, both amounting to a total of about $21,000. He admitted, however, on cross-examination that these were capital expenditures for permanent improvements under the building program and the expense would not be a yearly one.

As to neglecting the wants of teachers, plaintiff stated that he had once asked for a dictionary for his room and was turned down; that other teachers' requests were turned down; and that once when there was a serious gas leak in Mr. Pryor's chemistry room, the proper authorities were notified and did nothing about it for an unreasonably long period of time.

As to the accusation of spending $50,000 or more a year to transport athletes home after practice and so on, the district auditor testified it was not true, that the actual cost for the school year 1963-1964 was

$10,142.21 and was less for the preceding year. The auditor further testified that since his firm has been auditing the books for the district, the district has never failed to pay teachers' salaries when they were due; that the district had never issued teachers' orders and never issued tax anticipation warrants up to its legal limit; and that funds were always available to pay current bills and teachers' salaries. Plaintiff on cross-examination admitted that he always received his salary when due. He further admitted that sodding of football fields was never done at a time when the board was unable to pay teachers' salaries.

Other statements and charges made in plaintiff's letter could reasonably have been found to be untrue and misleading but it would unduly lengthen this opinion to relate the evidence in detail.

Plaintiff never made a formal or informal protest or report to any of his superiors about the subject matter of his accusations and charges.

To reverse the judgment plaintiff makes the contention that his remarks and comments are protected by the constitutional right of free speech. He relies principally on New York Times Co. v. Sullivan, 376 U.S. 254, 11 L. Ed.2d 686, and Garrison v. Louisiana, 379 U.S. 64, 13 L. Ed.2d 125. The New York Times case was an action for libel brought by a public official against a newspaper. The United States Supreme Court reversed a judgment for the plaintiff because in its opinion untrue accusations of public officials are actionable only if actual malice is shown. There was no right of employment involved, nor are the school officials in the case at bar seeking damages for libel. The case cited has no application. The Garrison case was a prosecution for criminal defama-

tion in which the defendant, a district attorney, had criticised the official conduct of judges. The Supreme Court of the United States held that criminal sanctions could not be imposed for criticisms of the kind enjoying protection from civil remedies under the "New York Times rule." Here again the authority cited is not relevant in the present case. The issue here is not whether the board may be publicly subjected to false accusations but whether it must continue to employ one who publishes misleading statements which are reasonably believed to be detrimental to the schools. Whatever freedom a private critic might have to harm others by the use or misuse of speech, the plaintiff here is not a mere member of the public. He holds a position as teacher and is no more entitled to harm the schools by speech than by incompetency, cruelty, negligence, immorality, or any other conduct for which there may be no legal sanction. By choosing to teach in the public schools, plaintiff undertook the obligation to refrain from conduct which in the absence of such position he would have an undoubted right to engage in. While tenure provisions of the School Code protect teachers in their positions from political or arbitrary interference, they are not intended to preclude dismissal where the conduct is detrimental to the efficient operation and administration of the schools of the district.

Plaintiff further contends his statements were not "knowing or reckless" falsehoods but were substantially correct in their criticisms, and that the board lacked statutory authority to dismiss him. The Teacher Tenure Law was enacted primarily for the protection of Illinois teachers. Its object is to improve the school system by assuring teachers of experience and ability a continuous service based

upon merit, and by protecting them against dismissal for reasons that are political, partisan or capricious. (Donahoo v. Board of Education, 413 Ill. 422.) A teacher may be dismissed, however, for sufficient cause as provided in the Code, and where the board after a hearing finds that the teacher's conduct is detrimental to the best interests of the schools and students its decision will not be set aside unless it is
21 without substantial support in the record. Keyes v. Board of Education, 20 Ill. App.2d 504; Jepsen v. Board of Education, 19 Ill. App.2d 204.

After examining the record in the case at bar, and the minute detail with which counsel have presented their respective versions of the letter's contents, we think the board's decision has not been shown to be against the manifest weight of the evidence. A teacher who displays disrespect toward the Board of Education, incites misunderstanding and distrust of its policies, and makes unsupported accusations against the officials is not promoting the best interests of his school, and the Board of Education does not abuse its discretion in dismissing him. (Jepsen v. Board of Education, 19 Ill. App.2d 204.) There is nothing in the record before us to indicate malice on the part of the board members toward the plaintiff, nor does it appear that the board's action was impulsive or capricious. The administration of the schools is within the domain of the school board, and courts do not interfere with the exercise of its powers unless it is shown to be capricious or arbitrary.

As we have indicated, the decision to dismiss the plaintiff was not against the manifest weight of the evidence and the circuit court properly refused to set it aside. The judgment is affirmed.

Judgment affirmed.

Mr. Justice Schaefer, dissenting:

Several considerations prevent me from agreeing with the result reached by the majority. The School Code authorizes a school board "To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, * * *". (Ill. Rev. Stat. 1965, chap. 122, par. 10—22.4.) It is not clear to me that by this language the General Assembly intended to authorize a school board to discharge a teacher for criticizing the policies and actions of the board. Such an authorization would tend to cut off a valuable source of information about the conduct of a most important public undertaking. And if the General Assembly did intend to authorize imposition of the ultimate sanction of discharge against a teacher for exercising first-amendment rights, I think that the State and Federal constitutions require a more precise standard than "the interests of the schools".

22 "We emphasize once again that 'precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.' N.A.A.C.P. v. Button, 371 U.S. 415, 438. 'For standards of permissible statutory vagueness are strict in the area of free expression. * * * Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.' Id. at 432-433 * * * When one must guess what conduct or utterance may lose him his position, one necessarily will 'steer far wider of the unlawful zone * * *' Speiser v. Randall, 357 U.S. 513,

526. For 'The threat of sanctions may deter * * * almost as potently as the actual application of sanctions.' N.A.A.C.P. v. Button, supra, at 433. The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being sanctioned." Keyishian v. Board of Regents of University of State of New York, ... U.S. ..... (January 23, 1967.) 17 L. Ed. 2d 629, 641.

The charges against the plaintiff were that his letter "contained many untrue and false statements and comments which directly and by innuendo and without justification questioned and impugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education and the School Administrators of this District in carrying out their official duties * * * seriously involved and damaged the professional reputations of said Administrators and Board and are and will be highly disruptive to the discipline of the teachers and the morale and harmony among teachers, administrators, Board of Education and residents of this District, and * * * will tend to foment controversy, conflict and dissension among them and jeopardize the welfare of the schools of this District."

These charges were formulated by the very members of the board whose "motives, honesty, integrity, truthfulness, responsibility and competence" were alleged to have been falsely inpugned. The aggrieved members of the board then determined whether the charges that they made had been established by the evidence, and they decided that their "charges on account of said reasons and causes are not remedi-

able", a determination required by statute before the sanction of discharge could be imposed. (Ill. Rev. Stat. 1965, chap. 122, par. 24—12.) The unseemliness, if not the unconstitutionality, of this procedure reinforces my doubt that the General Assembly intended that it should apply to the exercise of first-amendment rights.

23 But if we assume that the board had the power that it exercised, and assume further that the statements in the letter were untrue, there is still neither charge nor showing that the plaintiff knew that they were false, or that he made them with reckless disregard of their truth or falsity. "Moreover, even when the utterance is false, the great principles of the Constitution which secure freedom of expression in this area precludes attaching adverse consequences to any except the knowing or reckless falsehood. Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and ascertainment of truth." Garrison v. Louisiana, 379 U.S. 64, 72—3, 13 L. Ed. 2d 125, 85 S. Ct. 209.

Finally, in my opinion the board's charges were not established by the evidence. No evidence was offered to show that the letter had any effect whatsoever upon the teachers, the people of the school district, or anyone else. The board's charges alleged specific consequences, but they were not proved, and the board apparently reached its decision upon some theory akin to libel per se.

Moreover, as I read the record, the falsity of the principal statements contained in the plaintiff's letter was not established.

(1) Two bond issue referendum elections were held in 1961. The first, on February 25, was defeated; the second, on December 2, was successful. In 1964, proposals to increase the educational and transportation tax rates were twice defeated, on May 23 and on September 19. The plaintiff's letter was published on September 24, 1964. The opinion of the court is based upon the interpretation advanced by the board that the "original promises" of the board, referred to in the first paragraph of the plaintiff's letter, were those made in connection with the building program involved in the second 1961 referendum, and not those made in connection with the first 1961 referendum. On that interpretation the court finds that the plaintiff's statement was false. In my opinion that interpretation is incorrect, because in the context of the two 1961 bond issue proposals it attributes an unnatural meaning to the word "original", and because the plaintiff's letter states that it refers to matters contained in the "February thru November" issues of the paper. The architect testified that his
24 work on plans for the second bond issue was done in the latter half of 1961. It is not disputed that in connection with the February bond issue, under the heading "No Frills", it was represented: "Such items as swimming pools, athletic fields, auditoriums, etc., have been left out of this program to obtain as much classroom space as possible." The two schools then contemplated were described as containing "Boys' and girls' gym for state required physical education." The two publicity items prepared by the board and widely distributed in connection with the second bond issue also emphasized: "BUT NO FRILLS". They did not, however, mention that there

would be an auditorium in the new West High School. Nor did they mention that there would be an athletic field; instead, like the publicity for the first bond issue, they referred to "state required physical education facilities." It seems to me that the evidence shows that the board did not disclose, in the materials that it distributed, that the meaning of "no frills" had changed, and that the auditorium and athletic fields so conspicuously omitted from the first program were included in the second. It does not seem unreasonable to infer, as the plaintiff apparently did, that this lack of candor may have played a part in the defeat of the educational tax rate increases proposed in 1964.

(2) The plaintiff's letter challenged the accuracy of a published letter signed, "Your Board and Administration", which "stated that teachers' salaries total $1,297,746 for one year". In the bill of particulars it furnished, the board said that this statement was false because it "knows of no letter written by either the board or administration that states teachers' salaries for the figure as indicated." But the superintendent's letter of September 18, 1964, addressed to parents and signed "Your Board of Education and Administration," stated that the present educational tax rate "is inadequate to meet the teachers' salaries which alone total $1,297,746." When the superintendent testified he stated that the "figure was correct, but instead of the word 'teachers', it should have said 'Instructional Salaries.'" He explained that the latter category included not only teachers, but also deans, principals, librarians, counselors and four secretaries at each of the three schools. With respect to this matter the plaintiff

was clearly more accurate than the board, and probably no less accurate than the superintendent.

(3) The board charged that the plaintiff's letter falsely stated that the superintendent told the teachers, "Any teacher that opposes the referendum should be prepared for the consequences." The superintendent denied that he made the statement. But another teacher testified that at a meeting of teachers he was struck by the superintendent's statement, "You should be prepared to take the consequences," and jotted it down. As to whether or not the statement could be construed as a threat to teachers who opposed the "bond issue," he was not sure that it was directed at those who opposed it, or meant that any teacher would suffer because he could not obtain things for his classroom. The opinion of the court does not accept the board's denial that such a statement was made, but relies on "testimony that the statement attributed to him was not a threat but was merely meant to suggest that teachers would suffer by not being able to obtain things for their classrooms because money would not be available." Of the three teachers, including the plaintiff, who testified that such a statement was made, one gave it the interpretation stated in the majority opinion, another, "on thinking it over and on talking to other people," was not sure whether it was directed to those who opposed or to all teachers, and the plaintiff interpreted it as a threat to any teacher that opposed. On this evidence the plaintiff's interpretation can hardly be characterized as false.

(4) The substantial truth of plaintiff's charge that letters written by teachers "had to have the approval of the superintendent before they could be put in the paper" is established by the following

provision in the Handbook for Teachers of Lockport Township High Schools: "In order to prevent any possible embarrassment or misunderstanding, check the material with the building principal before releasing it. Any information which an individual feels should be published in the local papers should be submitted in triplicate to the publicity coordinator." The teacher's letters to which the plaintiff referred were actually submitted to the office of the superintendent before they were delivered to the newspaper.

The specific defects in the East High Building, of which the plaintiff complained, were established. But in other respects the plaintiff's letter was inaccurate. He was wrong on his figures as to the total annual amount spent on varsity sports, because the $200,000 figure he mentioned included capital expenditures. The actual annual expenses were about $49,500. The plaintiff's letter could be read as stating that in the past teachers' salaries had not been paid; on that reading it was not true, for the record
26 shows that teachers' salaries had consistently been paid on time. The cost of sodding the football field was paid with borrowed funds, but this was a capital expenditure. Eliminating free lunches in connection with athletic events would have reduced the cafeteria deficit, but would not have reduced the cost of cafeteria meals from 35 to 30¢.

To be entitled to the protection of the first amendment it is not necessary that the plaintiff's letter be a model of literary style, good taste and sound judgment. In my view it is not, but my view is irrelevant. The letter is substantially accurate, and more important it has not been shown to be knowingly false. Teachers are not necessarily the best critics

in matters of school finance and administration, but they are in closer contact with the actual operation of the schools than anyone else and the public should not be deprived of their views.

Under our system of school administration the most important part of the job is done by hard working, conscientious, even consecrated members of local school boards who serve without compensation. It is understandable that they should be quick to take offense at statements which they feel impugn their motives, honesty and integrity. But they are public officials engaged in the conduct of public business and they cannot be immunized from criticism, even by teachers.

A legislative system which, as in this case, casts them in the role of aggrieved victims who formulate, prosecute and punish charges based on their grievances is not, in my opinion, compatible with present standards of due process. Nor is such a procedure necessary, for charges of this sort could readily be heard and determined by the County Board of School Trustees, the County Superintendent of Schools, or the Superintendent of Public Instruction. The problem is particularly acute when the sanction of discharge is involved, for then the board must determine whether the condition that gives rise to the discharge is remediable. In a discharge case the board has already determined that the condition cannot be remedied, and it is hard to see how members of the board can be expected to review that determination impartially when the conduct upon which the discharge is based involved their personal grievances.

Mr. Chief Justice Solfisburg joins in this dissent.

UNITED STATES OF AMERICA

27

State of Illinois }
Supreme Court } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of January in the year of our Lord, one thousand nine hundred and sixty-seven, within and for the State of Illinois.

PRESENT: ROY J. SOLFISBURG, JR., CHIEF JUSTICE
JUSTICE WALTER V. SCHAEFER
JUSTICE BYRON O. HOUSE
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE RAY I. KLINGBIEL
JUSTICE ROBERT C. UNDERWOOD
JUSTICE DANIEL P. WARD
WILLIAM G. CLARK, ATTORNEY GENERAL
ROBERT G. MILEY, MARSHAL

ATTEST: MRS. EARLE BENJAMIN SEARCY, CLERK

Be It Remembered, that, to-wit: on the 19th day of January 1967, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

Marvin L. Pickering,
Appellant

No. 40038 vs.

Board of Education of Township High School, District Number 205, Will County, Illinois,
Appellee

Appeal from Circuit Court Will County W 65 G 2-Z

Error to

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well as the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Will County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 5th day of April, 1967.

/s/ Mrs. Earle Benjamin Searcy
Clerk,
Supreme Court of the State of Illinois.

(Seal)

30

UNITED STATES OF AMERICA

State of Illinois }
Supreme Court } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of March in the year of our Lord, one thousand nine hundred and sixty-seven, within and for the State of Illinois.

PRESENT: ROY J. SOLFISBURG, JR., CHIEF JUSTICE
JUSTICE WALTER V. SCHAEFER
JUSTICE BYRON O. HOUSE
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE RAY I. KLINGBIEL
JUSTICE ROBERT C. UNDERWOOD
JUSTICE DANIEL P. WARD
WILLIAM G. CLARK, ATTORNEY GENERAL
ROBERT G. MILEY, MARSHAL

ATTEST: MRS. EARLE BENJAMIN SEARCY, CLERK

Be It Remembered, that, to-wit: on the 27th day of March, A.D. 1967, the same being one of the days of the term of Court aforesaid, the following pro-

ceedings were, by said Court, had and entered of record, to-wit:

Marvin L. Pickering, Appellant No. 40038 vs. Board of Education of Township High School, District Number 205, Will County, Illinois, Appellee	Appeal from Circuit Court Will County

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

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SUPREME COURT
FILED
DEC 18 196
JOHN F. DAVIS, CLERK

APPENDIX

Volume II

In the Supreme Court of the United States

OCTOBER TERM, A.D. 1967.

No. 510

MARVIN L. PICKERING,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Defendant-Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

FILED AUGUST 17, 1967
PROBABLE JURISDICTION NOTED NOVEMBER 6, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D. 1967.

No. 510

MARVIN L. PICKERING,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Defendant-Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

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IN THE

Supreme Court of Illinois

NOVEMBER TERM, A.D. 1966

MARVIN L. PICKERING,

Plaintiff-Appellant,

VS.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Defendant-Appellee.

Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois.

Honorable **Michael A. Orenic**, Presiding.

Abstract of Record
Volume II

EXHIBITS

(The Exhibits admitted into evidence are numbered consecutively but are not bound together and do not bear individual page numbers.)

Board Exhibit 1: Original of letter submitted by Marvin L. Pickering to Lockport Herald. (Not Abstracted.)

Board Exhibit 2: Lockport Herald of Thursday, Sept. 24, 1964 which at page 4 contains letter of Marvin L. Pickering. (The letter is set out at page 11 of Abstract Volume I)

Board Exhibit 3: Page 1 of Lockport Herald of November 30, 1961. (Pertinent sections thereof are here Abstracted.)

VOTE SATURDAY ON NEW HIGH SCHOOLS FOR DISTRICT 205

Voters will go to the polls Saturday to vote on two proposed new high schools, a four-year high school to be located near the junction of Taylor Road and U.S. Highway Alternate 66, and a two year school to be located on the south side of Seventh Street. The Board of Education has passed a legal resolution calling for the four year school on the west side. Reason for this action is that the Citizens Advisory Council, area School Boards, and faculty have all recommended that the west side school be a four year school. It will have all facilities necessary for the four years of education, and will be able to house all four years the day school opens which should be in September of 1963.

East Side School

The capacity of the east side school will be 800 expandable to 1300, and the capacity of the four year west side school will be for 1000 expandable to 1500. The cost of the two schools has been cut to $5,500,000 by elimination of the swimming pools and any frills.

Construction will be fireproof, brick and block materials—sound, but economical construction. The cost to each taxpayer will be an average increase in taxes of 9¢ per $100 of asessed valuation above the present bond rate. This means that an average homeowner will pay less than 2¢ a day for this building program.

According to a spokesman for the Advisory Council: "It appears now that the main issue is whether or not the voters of the district are each willing to pay 2¢ a day more in taxes to insure that their children will receive good educational opportunities."

SAY BOND ISSUE OPPONENT CHARGES 'ABSOLUTELY FALSE'

Board Members Speak Before 300

Meetings were held Monday evening at the Lockport Township High School and the Valley View School to discuss the much needed high school building program for District 205. A total of over 300 persons attended as the council held its final meeting to explain the details to interested persons. Carroll Ward, President of the Board of Education, and Charles Harris, Vice Chairman of the Citizens' Advisory Council, presided over the meeting at the high school, and Harold M. Finley, Board member, presided over the Valley View meeting.

Almost all of the discussion centered around the campaign against the Board of Education that has occurred through letters to the Editor and other means. According to Carroll Ward, Board President, "These opposition campaigners have refused to listen to facts or appear in public to discuss the matter. An open meeting was held last Tuesday in the school auditori-

um, and opposition leaders specifically invited to discuss their views. Apparently the opposition prefers to put out misleading facts and figures in an effort to defeat the program, but refuses to discuss the matter in public."

According to Ward, if the program is defeated, it will be impossible to offer the high school students a high school education comparable with other children in the state. The students will have to be on a shift basis next year whether the issue carries or not.

Ward branded as absolutely false, recent statements that "The people will vote on more than $5,500,000." "This is not true," stated Ward. "The bond issue will be for this maximum amount—if bids come in under the estimates, the board will not sell all of the bonds. This was the case during a former high school building program, where the total authorized bond issue was not sold because it was not all needed."

It has been implied that the Board might sell the bonds at 3½% to 4% interest. "Again not true," said Ward. "Two recent bond sales in the area sold under 3% in competitive sealed bid sales. The Board has already authorized competitive bidding along these same lines, and will sell the bonds at only the very best rate in view of current market conditions. The Board was authorized to sell the last bonds sold by the District at 4½% but actually sold them at 2.9%."

During the course of the meeting it was also brought out that a nearby school district constructed a high school of comparable size to either of the proposed District 205 schools, for what would be about $3,000,000 in current prices. Almost all Board members, many Citizens' Advisory Council members and staff members have seen this school and all agree that it

will be comparable to either of the two that are being constructed for District #205 for a total of $5,500,000, except that the swimming pools were taken out of the proposed District 205 high schools to reduce costs.

Finley pointed out that the big issue involved is that the providing of only one new school at this time would result in the district's schools being filled to capacity the very first year of operation and voters would have to be asked to vote additional facilities prior to completion of the first building.

Finley also took issue with a statement made in print by opposition leaders, that the present building now accommodates 1700 nicely on a single shift, with no student being deprived of any educational opportunities. Finley stated: "This is completely false. Many students were denied admission to many courses this year, even though classrooms have been improvised in the library balcony and on the stage of the auditorium."

Ward also deplored the opposition's suggestion that the district could operate for some time on overlapping shifts. "If this is what parents want," Ward stated, "then the Board can do nothing else; but it is the duty of the Board of Education to attempt to offer good educational opportunities for all students in the district and double or overlapping shifts are not fair to the children."

In short, the entire group of 300 appeared to feel very strongly that while some very minor differences of opinions will always exist in any proposed building program—this one was more thoroughly studied by the Board, Citizens' Advisory Council and Faculty than almost any other proposal and is the only good answer to the current problem. All seemed to agree

that the many false facts being circulated are by various persons who have either refused to study the facts, refused to discuss them in public or have twisted facts in an effort to mislead the people in the district.

(Picture of Architect's Rendering of Proposed Lockport High School is not included here. Statement under picture is included as follows:)

Proposed West Side School—This is the proposed west side high school to be voted upon this Saturday, Dec. 2 from noon until seven p.m. The four-year comprehensive high school has an inital capacity of 1000 pupils. Its core facilities such as the heating plant, library, auditorium, cafeteria, and gymnasium are being built from the outset to accommodate 1500 pupils. The building will contain 55 teaching stations: 25 standard classrooms, 4 commercial rooms, 4 science rooms, a language laboratory, 2 music rooms, 2 homemaking rooms, an art room, a mechanical drawing room, 5 shop rooms, an administrative area, a library for 250 pupils, an auditorium, a cafeteria, a gymnaisum, 2 locker rooms and 2 study halls. The total square feet area of the school is 199,500. The $5½ million cost of the referendum also includes equipment, both movable and fixed, site improvement for drives, curbs, exterior lights, gravel parking lot, walks, and an athletic physical education field, sanitary sewers, storm sewer, water system and treatment and architect's fee.

Board Exhibits 4 thru 14 were not admtted into evidence and are not a part of the Record on appeal.

Board Exhibit 15: Board Resolution of October 8, 1964 Dismissing Marvin L. Pickering.

RESOLUTION

Be it and It Is Hereby Resolved by the Board of Education of Township High School District Number 205, Will County, Illinois, as follows:

1. That Marvin L. Pickering, a teacher employed by this District, be and he is hereby dismissed from his employment by this District as such teacher effective December 30, 1964, for the following charges, reasons and causes:

That he did write a certain letter to the editor of The Lockport Herald, a newspaper published in and having a general circulation in said District, and that he caused said letter to be published in said newspaper in its edition of Thursday, September 24, 1964 on Page 4 thereof, which said letter contained many untrue and false statements and comments which directly and by innuendo and without justification questioned and impugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education and the School Administrators of this District in carrying out their official duties, a copy of which letter as published in said newspaper is attached hereto and made a part of this resolution, which said statements, comments and questions contained in said letter written and caused to be published by said Marvin L. Pickering seriously involved and damaged the professional reputations of said Administrators and Board and the reputation of the schools of this District and are and will be highly disruptive to the discipline of the teachers and the morale and harmony among teachers, administrators, Board of Education and residents of this District, and which said state-

ments and comments will tend to foment controversy, conflict and dissension among them and jeopardize the welfare of the schools of this District.

2. That this Board of Education finds that said charges, reasons and causes as set forth in Paragraph One of this Resolution are true and is of the opinion that the best interests of this District and the Schools of this Dtsirct require such dismissal and that this Board further finds that its charges on account of said reasons and causes are not remediable.

3. That written notice of such charges and a bill of particulars thereof be served upon said Marvin L. Pickering as required by law.

Dated this 8th day of October, 1964.

/s/ Willard A. Anderson
President, Board of Education of
Township High School District Number
205, Will County, Illinois.

Attest:

/s/ Felix L. Borio
Secretary, Board of Education of
Township High School District Number
205, Will County, Illinois.

(The resolution contains as an attachment a copy of the letter of Marvin L. Pickering as it appeared in the Lockport Herald of September 24, 1964. The letter is set out at page 11 of Abstract Volume I.)

Board Exhibit 16: Notice of Dismissal of Marvin L. Pickering with certificate of Service. (The Notice is set out at page 9 of Abstract of Record Volume I.)

Board Exhibit 17: Demand for hearing by Marvin L. Pickering dated October 12, 1964. (Not Abstracted.)

Board Exhibit 18: Notice of Public Hearing and Certificate of Mailing. (Not Abstracted.)

Board Exhibit 19: Answer to demand for further Bill of Particulars and Certificate of Mailing. (Set at page 16 of Abstract Volume I.)

Board Exhibit 20: Demand for Bill of Particulars. (The Demand is set out at page 14 of Abstract of Record Volume I.)

Board Exhibit 21: Answer to Demand for Bill of Particulars. (Not Abstracted.)

Board Exhibit 22 was not admitted in evidence.

Board Exhibit 23: Audit report of Board of Education for year ending June 30, 1961. (Not Abstracted.)

Board Exhibit 24: Audit report of Board of Education for year ending June 30, 1962. (Not Abstracted.)

Board Exhibit 25: Audit report of Board of Education for year ending June 30, 1963. (Not Abstracted.)

Board Exhibit 26: Audit report of Board of Education for year ending June 30, 1964. (Not Abstracted.)

Board Exhibit 27: Group of eight newspaper articles which were written by a committee of the High School District 205 Teacher's Organization and published in a biweekly column from July 2, 1964 to Nov. 5, 1964. The following articles are reproduced in full: July 30, 1964, September 3, 1964, September 17, 1964.

Lockport Herald — July 30, 1964

DISTRICT 205 TEACHERS SPEAK

The Voters Provide the Tools

In our last article we reviewed at some length the way our school systems are organized, the net result of which is a school district, locally run and controlled, but ultimately accountable to the state government. This article will deal specifically with District 205, some of its current problems, and the possible outcome of these problems.

In our governmental setup, all levels have the power to raise the funds to pay for community needs and desires. This is true whether the community be local, state, or nation-wide and whether the funds collected be allocated for highways, ballistic missiles, or schools. The raising of funds is usually accomplished through taxation, which is simply the price we pay to provide for the general welfare.

Tax levies have either the implied or expressed approval of the public who, while not given the direct opportunity to voice opinions on every tax issue, nevertheless has the opportunity to assent or dissent at the polls when they, as voters, choose from their number those who will represent them in the law-making process and, presumably, reflect their feelings.

In financing the cost of education, any school board which has reached previously prescribed tax limits must appeal to the electorate for additional funds to operate its schools. One might reasonably assume that voters would approve such issues on the grounds that they had already given their approval to the election of the board members. Such, however, was not the case in District 205 this year.

In April, a board election was held in which three unopposed candidates were elected. In May, the District 205 Board of Education submitted a bond issue to the public for additional taxes to cover increased educational costs. The issue was defeated by a three to one margin. Most of the arguments presented against the issue were not against the idea of providing adequate funds for school operations; they were directed against various actions of the board. Those who will bear the ultimate effects of this defeat are the students and the teachers, not the board of education. So far, one of the main economies has been the board's refusal to make any adjustment of the teachers' salary schedule. Some curtailment of essential curricular offerings has already occurred. Continued refusal to provide funds must eventually result in more drastic reductions in curriculum, equipment, and services. In the light of the higher academic requirements for college admission today, any failure on the part of the local community to provide adequately for the educational needs of its students could create serious problems.

The school code charges local boards with the responsibility of providing funds for the operation of their schools, an obligation which can be met only with the approval and support of local communities. It is merely asking for consistency to request the electorate, should they desire a change in educational policy, to express themselves accordingly in the privacy of the voting booth when the time comes to elect public officials.

Lockport Herald — September 3, 1964

DISTRICT 205 TEACHERS SPEAK

Whenever school finances are mentioned, people are likely to think first of property taxes paid into the school fund. We have already pointed out that 90% of school funds must be obtained through this medium. We have also referred to the educational tax rate. What is it, and what does it mean when translated into a dollar and cents figure for the average home or property owner?

Our 1963 tax rate for education in Lockport Township High School District 205 was $1.222. This figure represents the amount of money paid for each $100 of assessed value (home and furnishings, land, car, etc.) Consequently, if a taxpayer's property were assessed at $8,000, or 80 hundreds, he would pay $1.22 x 80 or $97.60. In your own case, you may find your assessment by referring to your real estate and personal property tax bills. Real estate should be evaluated at slightly more than 50% of its market value.

Following is a breakdown of our own tax rate as compared with the rates of six other high school districts in Will County.

FUNDS	L.T.H.S.	J.T.H.S.	Plainfield	Wilmington	Lincoln-Way	Beecher	Peotone
Building	.1224	.1875	.1742	.1661	.1875	.250	.2418
Educational	.65	.750	1.5912	1.400	1.070	1.400	1.5108
Bond Retirement	.3493	.2885	.3602	.456	.2611	.5456	.4160
Ill. Municipal Retirement	.0078	.0210	.0168	.026	.0173	.0154	.0194
Transportation	.020	.007	—	.020	.020	.020	—
Junior College	.0725	—	—	—	—	—	—
Building Rental (State)	—	—	.1496	—	—	—	—
Sup. Bond	—	—	—	.0909	.0241	—	—
TOTAL	1.222	1.254	2.292	2.159	1.580	2.231	2.188
Per Pupil Educational Costs (1962-63)	$736.61	$1012.29	$406.42	$491.32	$697.19	$536.68	$580.48

In the previous article we referred to the assessed valuation of our school district and the assessed valuation per pupil. In 1953, Lockport's total assessed valuation was $65,953,100. This amount divided by 790, the number of pupils enrolled at the time, yields an assessed valuation per pupil of $83,485. By 1963, the total valuation had risen to $166,908,296, but the per pupil valuation had dropped to $69,545 because the student enrollment had risen to 2400. Even though our total wealth has increased, the taxable assets per pupil have dropped $13,940. This is the basic reason that the high school board of education must ask for more money to operate its three schools—Saturday, Sept. 19, is the day.

As we have pointed out before, you may have valid reasons for disagreeing with specific actions of the board of education. This is your perogative, but it is also your responsibility to seek further information about actions to which you object.

So far we have had no public response to this column. Since referendums usually provoke much discussion regarding the need to spend money for public education, we reemphasize our willingness to answer your questions. Address your letters to DISTRICT 205 TEACHERS SPEAK, c/o Lockport Herald, Lockport, Ill.

Lockport Herald — September 17, 1964

DISTRICT 205 TEACHERS SPEAK

This column is the voice of the Lockport Township High School District 205 Teachers' Organization. It is written by members of a committee appointed by the executive board of the group which, last year, represented 98% of the teachers of the district—Lock-

port Township High School (now Central) and Lockport West High School.

The Teachers' Organization is interested in all matters concerning the welfare of the schools. While attention is currently focused upon the pending referendum, subsequent articles will reflect a concern for many other aspects of education.

Following the defeat of the referendum last April, the teachers unanimously decided that some means of communication must be established to familiarize the voting public with the working structure of the high schools and the normal expenditures involved. As a direct result of this decision and with the cooperation of the Lockport Herald, the column DISTRICT 205 TEACHERS SPEAK was created.

Through the column we have attempted to clarify Lockport's need to pass the referendum which will be brought before the voters Saturday, Sept. 19. We now turn our attention to some of the possible alternatives facing the L.T.H.S. Board of Education if the public once again defeats the referendum. We do not pose these measures as threats, but as cold, concrete facts which we feel the public should consider.

Will the board, if the referendum fails, cut the lunch program with all of its personnel, eliminate the transportation system and the personnel involved, or curtail the curriculum and the teaching staff? In the interest of continued quality education, we trust that the board would choose to cut the non-academic program rather than the one that would jeopardize the best possible education that our present tax structure will provide. If cut-backs should become necessary, and we hope they will not, they should be of the type that affect the total pupil and adult populace in non-

educational areas. While such cuts would not directly affect the educational standards of our school system, they would undoubtedly impress voters with the fact that our schools need their support.

The cost of presenting each referendum to the public is at least $2,000. Courses of action are clear—something must be done.

The choice is yours, voters of High School District 205.

A vote for the referendum will not solve all the educational problems of our high schools. A vote for the referendum will alleviate the immediate, drastic needs and allow present standards of education to continue. However, with the passage of this referendum, we will not be leading; we will only be holding our heads above water.

To those citizens who object to the referendum: Voting NO on Saturday, Sept. 19, will mean that our students—many, leaders of the future—will be offered substandard educational opportunities which could lead to substandard outlooks in adult life.

As you analyze and evaluate your own objections and the educational needs of District 205, remember that you have an obligation to express your desires at the next board election. If, as some of you have indicated, you disagree with past actions of the board, we urge you not to penalize the students by voting NO on Sept. 19. Rather, express your objections by encouraging candidates who will support your educational philosophy.

Board Exhibit 28. Executed "Teacher's Contract" between Board of Education and Marvin Pickering bearing date of June 18, 1959 calling for commencement of duties on Tuesday after Labor Day, 1959.

Teachers' Exhibit 1: Board Agenda.

BOARD OF EDUCATION
SCHOOL DISTRICT NO. 205
Regular Meeting, October 8, 1964
Lockport Central High
Jefferson Street
Library Room, 7:30 o'clock P.M.

1. Call to order
2. Roll call
3. Minutes to be approved: reg. mtg. Sept. 10, 1964, adj. mtg. Sept. 22, 1964. Public Hearing on Budget—Sept. 22, 1964
4. Treasurer's report
5. Bills and payrolls to be approved
6. Superintendent's report
7. Committee reports
8. Attorney's report
9. Public Hearing & Petitions
10. Notices & Communications
11. Unfinished Business:
12. New Business:
    a. transfer funds from Construction to Educational to meet October 9 payroll, to be repaid when tax monies are available.
13. Announcements
14. Adjournment.

Teachers' Exhibit 2: Page two of Agenda.

Page two
Meeting of the Board of Education, Lockport School District 205, at Central High School, October 8, 1964, 7:30 P.M.
(*Executive)
Superintendent's Report, Dr. W. H. Blatnik
18. Bids

* 19. Mr. Marvin Pickering—To consider the dismissal of a tenure teacher from his teaching position and/or chaperone duties for insubordination or conduct unbecoming an employee.
20. Economy.
* 21. Employ Clyde Goranson for Central High Auto Shop-Industrial Arts for 1965-66. $5200.
* 22. Visit Lockport Herald.

INFORMATION

A. Installation of proper meter East, request of Charles Enz, City—I have written our architect to attempt to correct without charge to us.
* B. MEETING OCTOBER 5, at West High School 7:30 P.M.
   a. Mr. Pickering
   b. Economy
C. The West High sewage plant was in Marhoefer's bid to the district. His company subcontracted this to Keefe. Keefe bid $27,750. to Marhoefer. The plant was written up in the original specifications.
* D. Transportation Contract.

Future. Clerk for Mr. Flink's office.

WHB:mm

Teacher Exhibit 3 (six page foldout and one sheet insert entitled "Let's Face the Facts about Our High School Problem . . . Here's how it looks . . . " relating to election of February 25, 1961) containing the following:

WE ARE OVERCROWDED

1. Not enough classrooms.
2. All of the academic areas are either at or over capacity now, and will soon become critically overcrowded.

3. Unless additional facilities are started immediately, by 1963, (the earliest that all facilities could possibly be completed) we will have more than 900 students over our educationally sound capacity.

AS TEMPORARY STOP-GAP MEASURES, UNTIL MORE SPACE CAN BE PROVIDED, WE WILL BE FORCED TO:

1. Use over-sized classes.
2. Use "floating teachers"— those who use other teachers' rooms during the latters' study or conference periods.
3. Restrict enrollment in some subject areas.
4. Use staggered class schedules and extended school days.

ALL THIS WILL HELP . . . . .
BUT ONLY TEMPORARILY
HOW WILL WE SOLVE
THESE PROBLEMS? . . .

VOTE YES ☒

TO GET GOOD PERMANENT SCHOOL FACILITIES AT THE LOWEST POSSIBLE PRICE WILL REQUIRE A BOND ISSUE OF $4,875,000.

WHAT DOES THIS MEAN TO EACH OF US?
Here's how it affects
YOUR POCKETBOOK

At the start the bond rate increase over last year will be 15¢ per $100 equalized assessed valuation and will decrease to an average of 9¢ per $100 equalized assessed valuation for the term of the issue. Thus, on a house in the Lockport District with an equalized as-

sessed valuation of $7,000, the tax increase will average $6.30 per year,— less than 2¢ a day. On a house assessed at $10,000 (actual value approximately $20,000), the average annual increase will be $9.00,— less than 3¢ a day.

2 TO 3 CENTS A DAY
Our Problem In A Nutshell

1. We're overcrowded.
2. We need additional school facilities.
3. The council recommends a practical solution.
4. It will cost $4,875,000.
5. It will cost most of us 2¢ or 3¢ a day.

Yes, The Cost To Each Of Us Low—
And The Benefit To Our Children Is TREMENDOUS!

REMEMBER...

THIS IS AN INVESTMENT
NOT AN ASSESSMENT

Vote YES! ☒

THE CITIZENS' ADVISORY COUNCIL STUDIED THE PROBLEM AT LENGTH

Last fall, the Citizens' Advisory Council was formed. It was composed of 35 people, representative of every area of the district. The Council's purpose was to determine the needs of the Lockport High School District, and to find the solution to those needs. After reviewing all possibilities, the group decided that one plan would best meet our needs. It was not a snap judgment, but the considered decision of the people who have studied the problem thoroughly.

Both the Council and the School Board are unanimously supporting the solution.

THIS IS THE SOLUTION:

a. Adapt the present building for freshmen-sophomore use on the east side.
b. Construct a new high school for freshmen-sophomores on the west side site.
c. Construct a new junior-senior building on the east side site now owned by the School.

PLANS FOR BOTH SCHOOLS WILL START AT THE SAME TIME, BUT COMPLETION OF THE WEST SIDE SCHOOL IS EXPECTED IN 1962 AND THE EAST SIDE SCHOOL IN 1963, BECAUSE THE WEST SIDE SCHOOL IS THE SMALLER OF THE TWO.

THERE WILL BE NO FRILLS,
JUST GOOD, SOUND SCHOOL CONSTRUCTION

PROPOSED FACILITIES

Architect:

Kruegel, Healy, and Moore, Joliet—a local, highly reputable firm, experienced in educational building, employed by several grade schools in our High School District.

Location:

West Side School

New freshmen-sophomore building at junction of Taylor Road and U. S. Route 66-A on land under option by the Board. Located in the north-south center of the west side of the district.

East Side School

New junior-senior building on site acquired in 1958, near Seventh Street and Farrell Road. Proximity of water, sewer and electricity will reduce development cost.

Size of Schools:

West Side School

Complete facilities for an enrollment of 600-800 with special facilities large enough to accommodate future enrollment of 1,000 to 1,200.

East Side School

Complete facilities for an enrollment of 1,000-1,200, capable of expansion to 2,000 in the future.

Number of Classrooms:

West Side School

25 academic classrooms for English, mathematics, language, social studies, etc.
5 science labs for biology and general science.
2 shops for industrial arts.
Homemaking department.
Combination band and vocal room.
Cafeteria, library, study hall, offices and attendant facilities.
Boys' and girls' gym for state required physical education.

East Side School

37 academic classrooms for English, mathematics, language, social studies, etc.
7 labs for chemistry, physics, and other advanced science.
4 shops for advanced courses in industrial arts.
Homemaking department.
Music department.
Cafeteria, library, study hall, offices and attendant facilities.
Boys' and girls' gym for state required physical education.

Athletic Field:

Present athletic field will be used for interschool competition. Areas adjacent to the new buildings will be used as practice fields until future needs dictate improvements or additions.

Auditorium and Swimming Pool:

Present auditorium and swimming pool will serve entire area. However, new building plans lend themselves to future expansion without premium cost for these additional facilities.

Landscaping:

Present plans limit landscaping to stone base drives, curbs and gutters, drains, sidewalks, and minimum planting.

Equipment:

Cost of equipping and furnishing both buildings is included in the bond issue.

Type of Construction:

Modern, fireproof, brick and block materials, sound construction — but no frills.

Teacher Exhibit 4: Page 1 of Lockport Herald, February 21, 1961 (Pertinent Sections thereof are here abstracted):

LTHS Referendum Vote IS THIS SATURDAY
Board Proposes To Build And Equip 2 High School Buildings For $4,875,000

This Saturday, Feb. 25, will mark the climax of hundreds of man-hours of work by citizens, Board of Education, and staff members of Lockport Township High School as voters go to the polls to ballot on a single proposition to build a school on each side of the Canal, and to issue $4,875,000 in bonds to build and equip both buildings.

Early last fall, the Board of Education, realizing that tremendous enrollment increases were on the way, and that a new long-range plan must be developed, called upon the services of 35 citizens to study the district's "growing pains", and aid in the formulation of a long-range plan which would effectively handle immediate enrollments, and be flexible enough to be adapted to future growth. The members were selected from all parts of the district and from all walks of life.

Tremendous Enrollment Increases Ahead

The study by the Citizens' Advisory Council showed that present high school facilities were already overcrowded in most subject areas, with the situation to become extremely critical within the next two years. Today's enrollment of 1421 is already 131 students more than the educationally-sound capacity of 1300 for the present building. By 1963, 2208 students are expected, and by 1965, the anticipated enrollment of 2594 will be almost double the sound capacity of 1300. More than 3000 students are expected by 1967, and the high school enrollment will exceed 4000 in the early '70's. All studies showed that these enrollment projections are conservative, and they are not expected to decrease in the future.

Two Schools

After a careful study of all possible solutions, the Council unanimously recommended the plan now being proposed by this referendum, and it was unanimously adopted by the Board. The plan calls for a new freshmen-sophomore building on the west side of the Canal at the junction of Taylor Road and U. S. Highway 66A. This is located in the north-south center of the west side, with access to excellent transportation routes and in an area that can expect rapid growth in the near future. The building will be constructed for an initial capacity of 600-800 with special facilities large enough to accommodate a future enrollment of 1000-1200. Careful planning now will allow this building to be expanded or converted to a west side four-year high school at minimum cost when it becomes desirable.

The same recommendation included a new junior-senior building for the east side, located south of Seventh Street near Farrell Road on land owned by the Board. It would be planned for an initial capacity of 1000-1200 with special facilities large enough for an eventual enrollment of 2000. Its proximity to city water, sewer, and electricity makes site development more economical. This building was chosen for Junior-Senior attendance because the present building is not large enough to hold future junior-senior enrollments and because the new location would have ample land for future expansion and development. Considerable future growth is expected in this area.

No Frills

A special Cost Control Committee composed of members from the Advisory Council and staff has been meeting with the Board to aid in planning ade-

quate academic facilities for a good educational program but minus any educational or architectural frills. Such items as swimming pools, athletic fields, auditoriums, etc. have been left out of this program in order to obtain as much classroom space as possible. The latter will be postponed until some future date when the classroom need is not so great.

Plans for both buildings will be started at the same time, but the west side building is expected to be completed a year earlier (1962) than the east side building because the west side building is smaller. This will relieve the present overcrowding at least one year earlier than any other plan that was studied. The plan is flexible enough to be changed at any time in the future to meet the possibility of unusual growth in any portion of the large 99 square mile district. It could be adapted to a Unit District plan if this should be approved by the voters some time in the future. When the building program is completed, the present building will become an east side freshman-sophomore attendance center.

The 2-2 plan has been used by a number of prominent high schools with large areas as a means of solving rapidly growing enrollment problems, because of its flexibility feature. Among these are Blue Island, La Grange, Pekin, East Moline, and Waukegan. Some of these districts plan to operate four-year high schools as the enrollment grows large enough in any one area to make this feasible. Arlington Heights used a form of the 2-2 plan to develop its present system of several four-year high schools.

Top Financial Position

Lockport High School has an enviable financial position among similar high schools of the state. Rising assessed valuations, due chiefly to new industrial development, enabled the district to have the 6th lowest tax rate in the state last year—even lower than in 1955. Future assessed valuation increases plus a careful interlocking of the proposed bond schedule with the present bonds outstanding, will allow the district to pay off the $4,875,000 issue over a 20 year period with a bond tax rate increase of 15¢ above the present rate, for the first year and a decreasing rate thereafter, that will average 9¢ above the present rate for the life of the issue. The bonds will be sold in two or more packages as the building program progresses, so that considerable interest may be saved. Over the life of the issue, this would mean an average tax increase of less than 2¢ per day for a house assessed at $7,000 (actual value approximately $14,000) and less than 3¢ a day for a house assessed at $10,000 (actual value approximately $20,000).

Schools For Both Sides

It is important to note that the proposed plan takes care of enrollment needs for both sides of the district giving each side new facilities. Careful planning now, will allow future expansion at a minimum cost.

Teachers' Exhibit 5: (4 page pamphlet entitled "Our Children's Education Cannot Wait" the pertinent sections of which are abstracted. This pamphlets relates to election of December 2, 1961).

OUR ENROLLMENT PROBLEM

THIS IS WHY WE MUST ACT NOW

YEAR	ENROLLMENT	
1955	932	
1958	1259	(capacity 1300
1961	1664	TODAY
1963	2208	First year for full use of new building
1965	2594	Double capacity
1967	3019	
1969	3559	

★ Almost 4000 students are enrolled in grades 1-4 in our underlying elementary schools. They will be in high school by 1969. (Plus all new students moving into our dist.ct.)

★ Five years ago, we had 190 seniors. Today we have 279 seniors, 572 freshmen and 1045 first graders.

★ Prior to completion of the building, split sessions will have to be used, as enrollments will be more than 600 over capacity next year.

Extensive additional facilities have been required in every underlying grade school. Some have doubled their capacity while others have tripled in just the last 6 to 8 years. During this period of time, the high school has had no major expansion.

THE PROPOSED SOLUTION:

A new four-year high school on the west side and a two-year high school on the east side. The present high school will continue to be used, but as a two-year school. The schools will be located on sites now owned by the district the west side school near the junction of Taylor Road and U.S. Highway Alternate 66; and the east side school will be located on the south side of Seventh Street.

The presently proposed new high schools will contain a total of 98 teaching stations, including academic classrooms for English, mathematics, language, social studies, etc.; science labs for biology, general science, chemistry, physics, etc.; industrial arts shops and a homemaking department. Proper facilities will be provided in band, vocal music, cafeteria, library, study hall, state required physical education facilities, offices and attendant facilities.

The structure will be of modern fireproof, brick and block materials — sound construction, BUT NO FRILLS. Cost of equipping and furnishing will be included in the bond issue. (In the interests of economy, certain items that are desirable but not absolutely essential, such as a swimming pool, will not be included in the basic plan—but there will be a provision for such features to be added at a later date.) This is the first step toward the long-range plan. As enroll-

ments continue to rise, additional facilities will be needed—probably additions on both sides of the district.

The buildings are being designed for 1,000 on the west and 800 on the east, and in such a manner that can be readily and economically expanded.

It is felt that this solution is the best combination of educational and financial soundness and voter acceptability.

A Special School Election Has Been Called For Saturday, December 2, 1961 — Noon to 7 P.M. at the usual high school polling places

To get good permanent school facilities at the lowest possible price will require a bond issue of $5,500,000, which means an average annual tax rate increase of 9¢ per $100 of equalized assessed valuation, and even less as the district's assessed valuation continues to rise.

WHAT THIS WILL MEAN
TO THE AVERAGE TAXPAYER
HERE'S HOW IT AFFECTS
YOUR POCKETBOOK

IF YOU OWN AN AVERAGE HOME—
WITH A VALUE OF
$14,000 the average tax raise will be $6.30 per year
LESS THAN TWO CENTS PER DAY

THE EDUCATION OF OUR
CHILDREN IS THE MOST
IMPORTANT BUSINESS OF
OUR COMMUNITIES
We Can't Afford To Let Our Children Down
VOTE YES ☒
Saturday, December 2

Teachers' Exhibit 6: (5 page pamphlet entitled "Questions & Answers on District 205's Proposed Building Program," relating to December 2, 1961 elections. The pertinent parts are abstracted here):

Q. WHAT PROPOSITION WILL WE VOTE ON?

A. A single proposition to build and equip two new high school buildings, and to issue bonds to the amount of $5,500,000 for that purpose.

Q. WHAT ADVANTAGES WILL COME FROM A SUCCESSFUL ELECTION *NOW*?

A. 1. The present needs will be more critical, even before the proposed building program is completed. A delay would be detrimental to our children's education. Split sessions cannot be avoided in any event.

2. Rising prices of steel and other construction materials are expected to continue to raise building costs.

3. Work could be started on some of the construction next spring, buildings would be sufficiently far along that winter would not halt the work; and we would be able to occupy the new school facilities much earlier than if the start of construction were postponed.

THE NEED

Q. WHY DO WE NEED A HIGH SCHOOL BUILDING PROGRAM?

A. The High School is already overcrowded, and with even larger enrollments coming on in the next few years, the problem will become extremely critical before any additional facilities can be provided. We have a large district of 99 square miles with a population of over 35,000, and tremendous population potential.

Q. HOW DO WE KNOW THAT THE SCHOOL IS OVERCROWDED AND WILL BECOME EVEN MORE SO?

A. The present school facilities are adequate to provide a good education for an enrollment of about 1300 students. This year there are 1664 students enrolled, and by 1963 over 2200 are expected—more than 900 over capacity.

By 1965, our enrollment will be almost exactly double our educationally sound capacity; by 1969 we will have about 2300 more than we have facilities for now. In 1956, we had 190 seniors; today there are 279. This year, there are 572 freshmen, and 1045 first graders in the high school district. This is an increase of 130 first grade students over last year.

Past enrollments, and future enrollments as projected by our committee, are as follows:

1955	932	1963	2208
1958	1259	1965	2594
1961	1664	1967	3019
		1969	3559

Note: The above projections are not guesses, but an actual nose count of children now in our grade schools. The figures have been adjusted for drop-outs. From 1955 to 1965, our enrollment will almost triple.

Last year the Citizens' Advisory Council's enrollment committee predicted an enrollment this fall of 1661—we have 1664. This indicates extreme accuracy and confirms why double shifts will be necessary next year.

Q. IS THIS BIG INCREASE IN HIGH SCHOOL ENROLLMENT ONLY TEMPORARY?

A. No. You need only to look at the grade schools to see that there are going to be large high school enrollments for many years to come. National and State birth rate figures very clearly explain a portion of the problem. The post-war baby boom caused tremendous problems in our grade schools. Extensive additional facilities have been required in the underlying grade schools. The same children that necessitated this grade school construction, are now in high school. Also, new families are constantly moving into the district. There are almost 4000 students in the first through fourth grades in our high school district. They will be in high school in 1969.

Q. WHEREIN IS OUR HIGH SCHOOL INADEQUATE?

A. The maximum reasonable capacity of the high school is approximately 1300. This applies both to academic classrooms, and to vocational and special facilities. We have been forced to overcrowd the classrooms, and to press other space into use as temporary classrooms to increase the emergency capacity of the building, until additional facilities are provided. This has created a tremendous problem especially in academic areas, and makes it virtually impossible to conduct a proper program in such departments as science, English, mathematics, social studies, business education, homemaking, physical education, etc. In some departments this year it was necessary to deny students admission because of lack of facilities. Double shifts cannot be avoided next fall, as we will be more than 600 students over capacity.

— THE PROPOSED SOLUTION —

Q. WHAT IS THE PROPOSED SOLUTION?

A. To construct a new four-year high school on the west side, and a two-year high school on the east side. The present high school building will continue to be used, but as a two-year high school.

Q. WHAT WERE THE PRINCIPAL REASONS FOR RECOMMENDATION OF THIS PARTICULAR SOLUTION?

A. 1. First, it was found to be educationally and financially unsound to operate a single large high school for the entire district.

2. A long-range plan has been developed. As enrollments continue to rise, additional facili-

ties will be needed and both schools are constructed so they can be readily and economically expanded.

3. The proposed solution appears to be the best combination of educational and financial soundness and responsiveness to the wishes of the people of the district.

Q. WHY DON'T WE JUST BUILD A HIGH SCHOOL ON THE WEST SIDE?

A. The year a new west side building would be completed we would have almost 1500 students on the east side alone. Students could be transported from east to west but by 1964 the west side would be overflowing. By 1965 we will have almost 600 more students on the east side than facilities would be available for—more than could be transported, as the west side could not house anywhere near this excess number. In short, we need additional facilities for both sides, to house 1300 more by the time the project is built and an additional 1000 more than that in the four years after completion of the buildings.

Q. WHERE WILL THE NEW SCHOOLS BE LOCATED?

A. On the west side the school will be located near the junction of Taylor Road and U.S. Highway Alternate 66, on a site now owned by the district. The east side school will be located on the south side of Seventh Street.

Q. WHAT WILL BE THE CAPACITY OF THE NEW SCHOOLS?

A. Currently the west side will house approximately 1000 students, and the east side 800. This will allow all students living west of the canal to at-

tend the 4-year west side school. The present building on the east side, together with the new east side school, will house all east side students. The buildings are being designed by Kruegel, Healy and Moore—a local firm, highly reputable, and experienced in school planning. They will be designed so as to be readily and economically expanded.

Q. WHAT FACILITIES WILL THE BUILDING CONTAIN?

A. The presently proposed new high schools will contain a total of 98 teaching stations, including academic classrooms for English, mathematics, language, social studies, etc.; science labs for biology, general science, chemistry, physics, etc.; industrial arts shops and a homemaking department. Proper facilities for an enrollment of 1000 students on the west side and 800 on the east will be provided in band, vocal music, cafeteria, library, study hall, State required physical education facilities, offices and attendant facilities. (In the interests of economy, some features that we would like to have, such as a swimming pool, will not be included in the basic plan—but there will be a provision for such features to be added at a later date, or even at the outset if bids on the basic plan should come in sufficiently below the estimates.) The structures will be modern, fireproof, brick and block materials, of sound but economical construction. Cost of equipping and furnishing is included in the bond issue. The buildings will be readily expandable, when necessary.

— THE COST —

Q. WHAT BOND ISSUE WILL BE NEEDED TO FINANCE THE BUILDING PROGRAM?

A. $5,500,000

Q. IS IT POSSIBLE TO BUILD ADEQUATE FACILITIES FOR LESS MONEY?

A. No. This is a lot of money, but we must remember that we have a large district, with a large and ever increasing enrollment. Nothing less than the proposed building program can give our children a proper education. When the bond issue is spread over our more than $157,000,000 (and constantly increasing) assessed valuation, the amount falls into proper proportion.

If we try to get these essential facilities at a much lower cost, such lesser expenditure would actually be wasteful, inasmuch as it would provide such cheap construction that maintenance costs would more than offset the savings. Both the Board of Education and the Cost Control Committee have pledged to the voters that they will follow through to see that the expenditures authorized by the voters are carefully made, and that all reasonable construction economies will be utilized.

Q. IS THE PLANNED CONSTRUCTION ECONOMICAL?

A. Yes. Standard permanent school construction is being planned—with good economical materials. Our school board must be and is economy minded in planning the facilities, and must get a lot of educational facilities for the money. This is absolutely necessary in our case, inasmuch as our needs are so great. We can be proud of the school building we are going to have, without feeling that we have been extravagant.

Q. HOW MUCH WILL OUR SCHOOL BOND TAX RATE RISE DUE TO THIS BUILDING PROGRAM?

A. Due to a careful interlocking of the retirement schedule of these bonds together with that of outstanding bonds, and due to our district's constantly increasing assessed valuation, this proposed bond issue will result in a tax increase that is amazingly small. The early years our tax rate will go up 16¢ per $100 of equalized assessed valuation. Over the life of the bond issue, the average increase in our bond tax rate would be about 9¢—and even less if the district's valuation continues to increase as it has in the past.

Teachers' Exhibit 7: Letter to Parents.

September 18, 1964

Dear Parents:

A special appeal is being made to you concerning the referendum to be held Saturday, September 19, 1964. The polls will be open 12 noon to 7 pm. An increase is needed in our present tax rates.

These are the facts you need:

1. The proposition is to increase the educational rate from .65 to .86, and transportation from .02 up to .10.
2. There are 7 polling places: Central High, and Chaney, Fairmont, Ludwig, Homer, Parkview, and Northview Grade Schools.
3. The cost of education has risen steadily the last 10 years from $506 to $736 per child.
4. During the past 16 years the assessed valuation per pupil (wealth back of each pupil) has been at its lowest during the past two years.

5. Enrollments have risen year after year from 579 (1948-49) to almost 2600 this year.
6. We now operate 3 buildings instead of one on the same tax rate.
7. The present .65 educational tax rate is inadequate to meet the teachers' salaries which alone total $1,297,746.
8. The present .02 cent transportation rate is inadequate—we borrow from the education fund to make ends meet.
9. Fewer and fewer persons pay their personal property taxes—this is a loss to the school budgets.
10. The cost to an owner of a home with a market value of $15,000 means an additional cost of $18.86 per year—about 4½ cents per day.
11. This is for YOUR CHILDREN.

By supporting these necessary tax increases we can continue to provide quality education. A defeat means that education and students will suffer. We thank you for your time and courtesy for reading this letter. We hope you will find a few minutes to vote on this proposition on September 19.

Your Board of Education and Administration

Teachers' Exhibit 8: 32 Page Booklet, the cover of which bears the following words:

"Athletic Field and Court Diagrams
How to Arrange League Schedules
Tournament Brackets
Men's and Women's Weight Charts
Helpful Hints and Suggestions
For Athletic Programs . . . .
Compliments of
Wilson Sporting Goods Co. . . .
17th Revised Edition
Copyright by Wilson Sporting Goods Co. 1959"

and page 8 of which contains a diagram captioned:

"Quarter-Mile Track"
"Approved by the National Federation of State High School Athletic Associations"

and which diagram represents a running track 22 feet wide in the straightaway and 18 feet wide on the backside and curves. The diagram shows the straightaway to be 110 yards in length, the back side to be 110 yards in length and the curves at each end to be 110 yards all of which measurements are one foot from the inside edge of the track.

Respectfully submited,

LIGTENBERG, GOEBEL & DEJONG,
Attorneys for Plaintiff-Appellant

JOHN LIGTENBERG,
ANDREW LEAHY,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 510

MARVIN L. PICKERING,

Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

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THE DARNELL-WARREN PRINTING COMPANY, CHICAGO

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IN THE

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MARVIN L. PICKERING,

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BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

Appellant appeals from the judgment of the Supreme Court of Illinois entered on January 19, 1967, and the order of that court denying a petition for rehearing entered on March 27, 1967; by which judgment and refusal to rehear the Supreme Court of Illinois affirmed the order of the Circuit Court of Will County, Illinois, confirming the dismissal of appellant as a public school teacher in and for appellee. Appellant sets forth the following statement to show that the Supreme Court of the United States has jurisdiction of the Appeal and that a substantial question is presented.

OPINIONS BELOW.

The final administrative decision of appellee Board of Education confirming its dismissal of appellant as a public school teacher on December 2, 1964, is set out in Appendix C.

The original board resolution dated October 8, 1964, and incorporated into the final decision is set out in Appendix A.

The answer to a bill of particulars also incorporated into the final decision is set out in Appendix B.

The opinion of the Circuit Court of Will County, Illinois filed March 2, 1966 and its final order entered March 25, 1966, are set out in Appendix D.

The majority and dissenting opinion of the Illinois Supreme Court are reported at 225 N. E. 2d 1.

The order of the Illinois Supreme Court dated March 27, 1967, denying rehearing is set out in Appendix E.

JURISDICTION.

This case began when appellant was dismissed by his employer, appellee Board of Education, for writing a letter critical of the board and administration of the school district. The board relied on *Ill. Rev. Stat.*, Chap. 122, Sec. 10-22.4 (1963) for its power to dismiss. Appellant, a tenure teacher, demanded a hearing pursuant to *Ill. Rev. Stat.*, Chap. 122, Sec. 24-10 to 24-15. Upon completion of the hearing the board confirmed the dismissal and appellant filed suit for review of the final administrative decision pursuant to *Ill. Rev. Stat.*, Chap. 110, Sec. 264 to 279. The Circuit Court of Will County affirmed the decision of the board and appellant took a direct appeal to the Illinois Supreme Court under Illinois Supreme Court Rule 28-1 (1965) which provides "Appeals from the final judgments of circuit courts shall be taken directly to the Supreme

Court: * * * (b) in cases involving a question arising under the Constitution of the United States or of this State." (The revised rules keep this as rule No. 302 which is set out at 36 Ill. 2d 103.)

The Supreme Court of Illinois affirmed with Chief Justice Solfisburg and Justice Schaefer dissenting on January 19, 1967. A petition for rehearing was denied on March 27, 1967, and notice of appeal to the Supreme Court of the United States was filed with the Clerk of the Supreme Court of Illinois on June 21, 1967.

The jurisdiction of the Supreme Court to review this decision is conferred by Title 28 United States Code Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case:

Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282 (1921).

Nashville C. & St. L. Ry. v. *Walters*, 294 U. S. 405 (1935).

STATUTES INVOLVED.

Illinois Revised Statutes (1963), Chapter 122 Section 10-22.4 is challenged as unconstitutional. It provides:

"Sec. 10-22. *Powers of board.* The school board shall have the powers enumerated . . .

Sec. 10-22.4 *Dismissal of teachers.* To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however to the provisions of Sections 24-10 to 24-15, inclusive. Marriage is not a cause for removal."

(The statute has remained unchanged during the pendency of the proceedings.)

Illinois Revised Statutes, Chapter 122, Section 24-12 is involved. It provides procedures for dismissal of tenure teachers, such as appellant, by way of a hearing before the employing school board. In its material part it provides:

> 24-12: "• • • If the dismissal or removal is for any other reasons [than decrease in number of teachers] or cause it does not become effective until approved by a majority vote of all members of the board upon specific charges and after a hearing, if a hearing is requested in writing by the teacher within 10 days after the service of notice as herein provided. . . ."

(The 1967 Illinois General Assembly has approved an amendment providing for an independent hearing officer instead of the employing board. The bill has not yet been presented to the governor. The change will not alter the disposition of this case.)

Illinois Revised Statutes, Chapter 110, Par. 264-279 provide for judicial review of final administrative decisions (including dismissal of tenure teachers) and in the part material to this case provides:

> Par. 274: "Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. No new additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct."

QUESTIONS PRESENTED.

1. Does *Illinois Revised Statutes,* Chapter 122, Sec. 10-22.4 which empowers boards of education to dismiss teachers, place an unconstitutional limitation upon the exercise by teachers of the right of free speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution?

a. Has appellant's right of free speech been infringed by the school board's dismissing him under this statute because appellant wrote and published a letter which was critical of the board of education and administration but which did not contain statements that were knowingly or recklessly false?

b. Does the statute provide clear and precise language which advised appellant before he wrote the letter that he would be subject to dismissal or is the statutory language unconstitutionally "void for vagueness?"

2. Is the decision of the Illinois Supreme Court itself an unconstitutional limitation on appellant's right of free speech and is the decision also unconstitutionally vague?

3. Prescinding from the particular statute and decision, can appellant, or any pubic school teacher, be dismissed for writing and publishing statements critical of his board of education and administration when the statements are substantially correct?

4. Does the mere fact that plaintiff is an employee of government automatically restrict or curtail his right to free speech as guaranteed by the Constitution?

5. Does an employment dismissal hearing comply with the Due Process requirements of the Fourteenth Amendment to the Constitution of the United States in a case in which a teacher has written and published a letter critical of his board of education and administration when the

Board of Education acts as prosecutor of the cause, and the Board of Education also acts as the trier of facts and the findings of the Board of Education are entitled to be considered *prima facie* correct upon judicial review?

STATEMENT OF THE CASE.

In September, 1959, Marvin L. Pickering began his duties as a regularly certified public school teacher for the Board of Education of Township High School District 205, Will County, Illinois. At that time and subsequently Pickering was also a resident of the district.

During the next five years the board of education submitted four tax proposals to the voters of the district. Two concerned bonds for the construction of new schools. Two concerned tax rate increases. The material dates are:

February 25, 1961: The board asked the voters to approve a bond issue to raise $4,875,000 to erect two new schools. This proposal was defeated.

December 2, 1961: The board submitted to the voters another bond proposal, this time calling for the authorization of a bond issue to raise $5,500,000 to build two new schools. The proposal was passed. The bonds were issued and the schools were built.

May 23, 1964: The board submitted a proposal calling for an increase in the tax rate. The voters defeated the proposal.

September 19, 1964: The board submitted a second proposal calling for an increase in the tax rate. It was this second tax rate increase proposal that brought Marvin Pickering from obscurity.

In the weeks which preceded the election, the Lockport Township High School District 205 Teacher's Organization published a series of columns in the local newspaper,

the *Lockport Herald.* Some of these columns urged passage of the September 19th tax rate increase proposal. In its July 30, 1964, column the organization said:

> "Some curtailment of essential curricular offerings has already occurred. Continued refusal to provide funds must eventually result in more drastic reductions in curriculum, equipment and services."

On September 17th the organization column said:

> "Voting NO on Saturday, Sept. 19, will mean that our students—many leaders of the future—will be offered substandard educational opportunities which could lead to substandard outlooks in adult life."

In the same September 17th issue the superintendent of the district had a letter published which said:

> "An increase is needed in our present tax rates . . . By supporting these necessary tax increases we can continue to provide quality education. A defeat means that education and students will suffer. * * * We hope you will find a few minutes to vote on this proposition of September 19.
>
> Your Board of Education and Administration."

The superintendent's letter was distributed in mimeographed form to the voters on September 18th. The next day the voters of the district rejected the proposed tax increase.

Marvin Pickering had just started his sixth year of teaching in the district when the September 19th tax increase was defeated. In his first five years he had apparently taught without incident. The record contains nothing about his teaching ability. Whether he was the object of reprimand or the subject of special praise is not disclosed. Although he had actively supported one of the 1961 building bond proposals, he drew no special attention until a letter he submitted to the editor of the *Lock-*

port Herald on September 22, 1964, appeared in the September 24th edition of the newspaper.

On October 8, 1964, the Board of Education adopted a resolution dismissing him because of his statements in the letter. The resolution and letter which is incorporated into the resolution is set out in Appendix A.

Being a tenure teacher, Pickering demanded a hearing pursuant to *Ill. Rev. Stat.*, Chap. 122, Sec. 24-12. He also demanded a Bill of Particulars. The hearing was granted and the board supplied an Answer to the Bill of Particulars specifying the parts of the letter to which it objected (Appendix B).

The basic charges against Pickering were that statements in the letter were untrue and that because they were untrue the reputations of the board, administration and the schools were injured; the statements would disrupt the discipline of the teachers; and the statements would tend "to foment controversy, conflict and dissension" among board, administration, faculty and residents of the district.

The board in its Answer to Bill of Particulars (Appendix B) asserted that Pickering's letter was untrue in 16 particulars. Pickering's response to this charge of factual inaccuracy was and remains that his statements were essentially correct. Additionally, Pickering's attorney took the position at the hearing:

> "That all this testimony today is basically irrelevant because I think the real issue here is whether he has a right to write the letter, without reference to the fact as to whether every statement in it was true or untrue."

The hearing was chiefly concerned with the accuracy or inaccuracy of the statements. No evidence was received concerning the reputation of the board members, administration or schools. No evidence was received concerning disruption of teacher discipline.

At the close of the hearing the board adopted a summary resolution which found that the charges of the initial resolution (Appendix A) and the Bill of Particulars (Appendix B) had been proved. The board concluded that the statements were factually untrue and that this resulted in *per se* injury to the reputation of the schools and its officials and would be *per se* disruptive of teacher discipline.

Pursuant to the Administrative Review Act (*Ill. Rev. Stat.*, Chap. 110, Par. 264-279) Pickering sued for review of his dismissal in the Circuit Court of Will County, Illinois. His complaint asserted denial

> "of his property and personal rights wthout due process of law in violation of the Fourteenth Amendment of the Constitution of the United States • • • of his right to freedom of the press and of speech in violation of the First Amendment of the Constitution of the United States."

The Circuit Court held that the

> "standard in the statute that the board has power to dismiss any teacher 'whenever, in its opinion, the interests of the schools require it' is constitutionally sufficient. It is not a standard so vague and indefinite as to be a denial of due process." (Appendix D.)

The Circuit Court also held that the "interests of the school" "override Pickering's freedom of speech." The Circuit Court concluded by affirming the dismissal.

Pickering appealed to the Illinois Supreme Court which affirmed.

The majority and dissenting opinions adequately frame the factual and legal dispute which Pickering now brings to the Supreme Court.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The right of public employees to express their opinions freely even though such opinions may be critical of the government officials who employ them has reached the highest courts in five jurisdictions during the last term of the Supreme Court.

On November 29, 1966, the New York Court of Appeals in a 4-3 decision upheld the dismissal of the Bethpage New York teacher who had by letter and oral statements criticized certain policies of the school system. *Puentes* v. *Board of Education,* 223 N. E. 2d 45, 226 N. E. 2d 701. Attorneys for Marvin Pickering have been informed that a petition for writ of certiorari either has or will be shortly filed with this court.

On December 7, 1966, the Supreme Court of Alaska in a 2-1 decision upheld the dismissal of two teachers by the Seward, Alaska, school system. The teachers had openly criticized certain policies of the school system and had made public statements concerning a possible campaign to remove the superintendent from office. The teachers in the *Watts* case currently have a petition for writ of certiorari pending before this court. *Watts* v. *Seward School Board,* 421 P. 2d 586. Justice Rabinowitz in his dissent said:

> "By today's decision the right of free speech in this state has sustained a serious encroachment. Apparently the principles that free speech encompasses 'uninhibited', 'robust', and 'wide-open' debate on public issues has been shunted aside. In its place has been substituted a holding that cannot fail to curtail discussion among those most intimately concerned with this state's educational system."

On December 20, 1966, the Supreme Court of California in 4-2 decision held that although an employee's campaign-

ing against his own superior in a recall election might be subject to prohibition and was within the scope of a directive prohibiting political activity, the directive was constitutionally void because of overbreath. *Bagley* v. *Washington Township Hospital District et al,* 421 P. 2d 409, 55 Cal. Rptr. 401. The California Supreme Court said:

> "The public employee surely enjoys the status of a person protected by constitutional right. Public employment does not deprive him of constitutional protection. In the absence of an imperative necessity to protect the public from irresponsible activity of so serious a nature that it would disrupt the public welfare, such protections are not subject to destruction by a public employer's insistence that they be waived by contract."

On January 19, 1967, the Illinois Supreme Court in a 5-2 decision upheld the dismissal of Marvin Pickering.

On July 11, 1967, the Supreme Court of Iowa in a 4-3 decision overruled the suspension of three firemen who had violated a department rule by publishing statements regarding a dispute between the department and the firemen's union. The court concluded:

> "Generally speaking, employees have a right to publicize the facts of a labor dispute * * * In absence of proof of impairment of the administration of public service, this rule applies to public employees." *Klein et al.* v. *Civil Service Commission,* Iowa Supreme Court No. 147-52552.

The question of the right of public employees to criticize the government and officials for whom they work has arisen in the past but never with the intensity of the last year. The five states which since November 29, 1966, have considered the issue contain 25% of the population of the United States.

The division of judicial opinion on the subject is demonstrated by the fact that each of the five cases had a dissent

of at least two (except Alaska which has only three justices) and, the peculiarities of each case aside, simple arithmetic shows 14 justices on one side of the issue and 16 on the other.

Prior to this recent upsurge of public employee-free speech cases the chief constitutional question concerning such employees had been the loyalty oath. The question of public employees criticizing the government officials and practices has been considered by the Supreme Court only in the *Watts* case which this court remanded for further consideration. 381 U. S. 126.

It appears, however, that prior to 1966, state courts have given adequate consideration of the right of public employees to voice criticism of their employers. The Florida Supreme Court in *City of St. Petersburg* v. *Pfeiffer*, 52 So. 2d 796 (1951) held "an employee may express himself freely so long as he does not impair the administration of the service in which he is engaged." The same court in *Adams* v. *State*, 69 So. 2d 309 (1954) ordered reinstatement of a principal who had actively campaigned against the election of the district superintendent. The court described the apprehension that disloyalty would result as "speculative" and pointed out that if insubordination or other misdeeds occur then a dismissal would be proper.

The Louisiana Supreme Court in 1958 in *Brickman* v. *New Orleans Aviation Board*, 107 So. 2d 422, upheld the right of criticism unless there is proof of impairment of service. Likewise the California Court of Appeals in *Board of Trustees* v. *Owens*, 23 Cal. Reptr. 719, 720 (1962), held for a teacher who criticized his board because there was no evidence of "an impairment of the teaching process."

The Wisconsin Supreme Court *State* v. *McPhee*, 194 N. W. 2d 711 (1959), also upheld a professor whose statements "no matter how derogatory" * * * "fall short of instigating others to engage in a wrongful course."

Florida, Louisiana, California and Wisconsin do not provide overwhelming authority. However, when considered with recent decisions of this court, they would probably form adequate safeguards for public employees and for the public interest in both public debate and efficient public services.

The series of loyalty oath cases considered by this court demonstrate that the two basic principles of constitutional law regarding first amendment rights apply with full force to the public employee. First, in order to have any limitation at all there must be an overriding interest of the State that justifies suppression of the right. Second, assuming the existence of such an overriding interest the limitation must be narrowly drawn in clear and precise terms. *Wieman* v. *Updegraff*, 344 U. S. 183; *Cramp* v. *Board of Public Instruction*, 368 U. S. 278; *Baggett* v. *Bullitt*, 377 U. S. 360; *Elfbrandt* v. *Russell*, 384 U. S. 11; *Keyishian* v. *Board of Regents*, 385 U. S. 589.

The loyalty oath cases coupled with *New York Times* v. *Sullivan*, 376 U. S. 254, and *Linn* v. *United Public Guard Workers*, 383 U. S. 53, give ample indication that a public employee's right to criticize extends unless and until his comments are knowingly or recklessly false. Although the board (Appendix A, B, C) did not find the letter to be either knowingly or recklessly false this element was ignored by the majority of the Illinois Supreme Court.

Notwithstanding the previous state case formula—"the right to criticize continues unless there is actual impairment of service"—and the convergence of *Keyishian*, *New York Times* and *Linn*, this aspect of constitutional law on the practical day to day school district level remains in a state of confusion so that at least in New York, Illinois and Alaska teachers are best advised to say nothing lest what they say may be deemed "against the best interests of the schools."

It would appear that public employees in the 40 or more jurisdictions which have not yet reached the question are in danger of having the *Pickering, Puentes* and *Watts* cases give their courts direction instead of the California and Iowa decisions.

Appellant suggests that constitutional rights should not depend upon the jurisdiction in which a person resides or works.

This question is likely to arise even more often in the future. Public employment is expanding rapidly. Approximately one in every seven employees works for government—with the largest numbers and the greatest rate of increase being in the state and local field.

But the magnitude of the question takes on special significance for teachers because of the peculiar statutory schemes under which they may be dismissed. Illinois is fairly typical.

A teacher who has achieved tenure may be dismissed only after a hearing if he demands one. But the hearing is conducted by the same board which dismissed him. It is that board which hears evidence and makes the findings. To compound the difficulty, when judicial review is sought, the findings of the board are deemed *prima facie* true and correct (*Ill. Rev. Stat.*, Chap. 110, Sec. 274).

The root evil is the board acting in the triple capacity of prosecutor, judge and jury. In this case it was the very board which had been criticized that decided that Marvin Pickering's statements were not in the best interests of the district. This procedure has been the subject of repeated criticism including that of Justice Schaefer who, in his dissent to this case, described it as "unseemly if not unconstitutional." Thus, a finding of *per se* damage made by the very persons who were *per se* damaged goes to a court with the benefit of a rule that makes the finding

prima facie correct. This pyramiding of presumptions directly challenges the public interest in having free, wide open debate.

The 1967 Illinois legislature has amended the procedure to provide for an independent hearing officer but Marvin Pickering is not thereby benefited nor are teachers in other states where the practice of using an independent hearing officer is not common.

Marvin Pickering has been dismissed. The monetary losses are but a small part of his burdens. The loss of professional status and the social stigma of having been fired are a heavy price to pay for entering into public debate. It is doubtful that he will put pen to paper again and it is certain that thousands of Illinois teachers will voice opinions in the most circumspect and guarded terms and even then with the fear of Pickering's fate becoming theirs.

Appellant suggests to this court that its decisions in the loyalty oath cases have had great effect but that in addition to having the right to refrain from signing a statement of his loyalty, a public school teacher should have the right to sign a statement which he believes to be true. He should not be subject to dismissal under a statute which allows his statement to be construed to be "not in the best interests of the schools."

CONCLUSION.

Based on the foregoing, appellant respectfully submits that the penalty he has been given for exercising his right of free speech coupled with the unusual recurrence of this same issue in other jurisdictions should prompt this court to exercise its jurisdiction in this case.

Respectfully submitted,

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APPENDIX A.

RESOLUTION.

Be it and It Is Hereby Resolved by the Board of Education of Township High School District Number 205, Will County, Illinois, as follows:

1. That Marvin L. Pickering, a teacher employed by this District, be and he is hereby dismissed from his employment by this District as such teacher effective December 30, 1964, for the following charges, reasons and causes:

That he did write a certain letter to the editor of The Lockport Herald, a newspaper published in and having a general circulation in said District, and that he caused said letter to be published in said newspaper in its edition of Thursday, September 24, 1964 on page 4 thereof, which said letter contained many untrue and false statements and comments which directly and by innuendo and without justification questioned and unpugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education and the School Administrators of this District in carrying out their official duties, a copy of which letter as published in said newspaper is attached hereto and made a part of this resolution, which said statements, comments and questions contained in said letter written and caused to be published by said Marvin L. Pickering seriously involved and damaged the professional reputations of said Administrators and Board and the reputation of the schools of this District and are and will be highly disruptive to the discipline of the teachers and the morale and harmony among teach-

ers, administrators, Board of Education and residents of this District, and which said statements and comments will tend to foment controversy, conflict and dissension among them and jeopardize the welfare of the schools of this District.

2. That this Board of Education finds that said charges, reasons and causes as set forth in Paragraph One of this Resolution are true and is of the opinion that the best interests of this District and the Schools of this District require such dismissal and that this Board further finds that its charges on account of said reasons and causes are not remediable.

3. That written notice of such charges and a bill of particulars thereof be served upon said Marvin L. Pickering as required by law.

Dated this 8th day of October, 1964.

/s/ Willard A. Anderson,
President, Board of Education of Township High School District Number 205, Will County, Illinois.

Attest:

/s/ Felix L. Borio,
Secretary, Board of Education of Township High School District Number 205, Will County, Illinois.

LETTERS TO THE EDITOR

* * * Graphic Newspapers, Inc.

Thursday, September 24, 1964 page 4.

Dear Editor:

I enjoyed reading the back issues of your paper which you loaned to me. Perhaps others would enjoy reading them in order to see just how far the two new high schools have deviated from the original promises by the Board of Education. First, let me state that I am referring to the February through November, 1961 issues of your paper, so that it can be checked.

One statement in your paper declared that swimming pools, athletic fields, and auditoriums had been left out of the program. They may have been left out but they got put back in very quickly because Lockport West has both an auditorium and athletic field. In fact, Lockport West has a better athletic field that Lockport Central. It has a track that isn't quite regulation distance even though the board spent a few thousand dollars on it. Whose fault is that? Oh, I forgot, it wasn't supposed to be there in the first place. It must have fallen out of the sky. Such responsibility has been touched on in other letters but it seems one just can't help noticing it. I am not saying the school shouldn't have these facilities, because I think they should, but promises are promises, or are they?

Since there seems to be a problem getting all the facts to the voter on the twice defeated bond issue, many letters have been written to this paper and probably more will follow, I feel I must say something about the letters and their writers. Many of these letters did not give the whole story. Letters by your Board and Administration have

stated that teachers' salaries total $1,297,746 for one year. Now that must have been the total payroll, otherwise the teachers would be getting $10,000 a year. I teach at the high school and I know this just isn't the case. However, this shows their "stop at nothing" attitude. To illustrate further, and I quote, "Any teacher that opposes the referendum should be prepared for the consequences". I think this gets at the reason we have problems passing bond issues. Threats take something away; these are insults to voters in a free society. We should try to sell a program on its merits, if it has any.

Remember those letters entitled "District 205 Teachers Speak", I think the voters should know that those letters have been written and agreed to by only five or six teachers, not 98% of the teachers in the high school. In fact, many teachers didn't even know who was writing them. Did you know that those letters had to have the approval of the superintendent before they could be put in the paper? That's the kind of totalitarianism teachers live in at the high school, and your children go to school in.

In last week's paper, the letter written by a few uninformed teachers threatened to close the school cafeteria and fire its personnel. This is ridiculous and insults the intelligence of the voter because properly managed school cafeterias do not cost the school district any money. If the cafeteria is losing money, then the board should not be packing free lunches for athletes on days of athletic contests. Whatever the case, the taxpayer's child should only have to pay about 30¢ for his lunch instead of 35¢ to pay for free lunches for the athletes.

In a reply to this letter your Board or Administration will probably state that these lunches are paid for from receipts from the games. But $20,000 in receipts doesn't pay for the $200,000 a year they have been spending on varsity sports while neglecting the wants of teachers.

You see we don't need an increase in the transportation tax unless the voters want to keep paying $50,000 or more a year to transport athletes home after practice and to away games, etc. Rest of the $200,000 is made up in coaches' salaries, athletic directors' salaries, baseball pitching machines, sodded football fields, and thousands of dollars for other sports equipment.

These things are all right, provided we have enough money for them. To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse.

If these things aren't enough for you, look at East High. No doors on many of the classrooms, a plant room without any sunlight, no water in first aid treatment room, are just a few of many things. The taxpayers were really taken to the cleaners. A part of the sidewalk in front of the building has already collapsed. Maybe Mr. Hess would be interested to know that we need blinds on the windows in that building also.

Once again, the board must have forgotten they were going to spend $3,200,000 on the West building and $2,300,000 on the East building.

As I see it, the bond issue is a fight between the Board of Education that is trying to push tax-supported athletics down our throats with education, and a public that has mixed emotions about both of these items because they feel they are already paying enough taxes, and simply don't know whom to trust with any more tax money.

I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration. Do you really know what goes on behind those stone walls at the high school?

Respectfully,

MARVIN L. PICKERING.

APPENDIX B.

ANSWER TO BILL OF PARTICULARS.

Now comes the Board of Education of Township High School District No. 205, Will County, Illinois, by Krusemark and Bertani, its attorneys, through Louis R. Bertani, and for answer to the bill of particulars heretofore filed by Marvin L. Pickering, says:

1. State specifically what statements and comments in the publication complained of are true or false:

A. The source of the majority of the allegations contained in the letter is not the February through November, 1961 issues of the Lockport Herald as indicated in paragraph 1 of Mr. Pickering's letter.

B. The first sentence of Mr. Pickering's letter states that others would enjoy reading the back issues of the Lockport Herald to see just how far the two new high schools have deviated from the original promises of the Board of Education where in fact, there has not been a substantial deviation.

C. In paragraph 2 of Mr. Pickering's letter he states that athletic fields and auditoriums were originally left out of the program. This is not true.

D. The athletic field at Lockport Central is regulation distance.

E. As to teachers' salaries stated in paragraph 3 of Mr. Pickering's letter we know of no letter written by either the board or administration that states teachers' salaries for the figure as indicated.

F. The superintendent has never told the teachers the

following: "Any teachers that oppose the referendum should be prepared for the consequences."

G. As to paragraph 4 of Mr. Pickering's letter dealing with the letter entitled: "District 205 Teachers Speak," it is not true that 98% of the school teachers are supposed to have agreed to this letter.

H. Letters do not have to have the approval of the superintendent before they can be put in the paper.

I. The cafeteria is not losing money because of packing free lunches for athletes on days of athletic contests.

J. Lunch prices are not 35¢ rather than 30¢ because of packing of free lunches for athletes.

K. The school board is not spending $200,000.00 a year on varsity sports and is not neglecting the wants of teachers.

L. As to paragraph 5 of Mr. Pickering's letter, the cost of transporting athletes home after practice and to away games and etc. is not $50,000.00.

M. As to paragraph 6 of Mr. Pickering's letter, football fields have not been sodded on borrowed money.

N. Teachers' salaries have always been paid.

O. The freedom of a teacher to sign a letter as a teacher and have the same published has not been taken away from Mr. Pickering or any teacher at Township High School District No. 205 by this administration.

P. The bond issue has not been twice defeated.

2. State specifically what statements and comments in the publication complained of directly question the motives, honesty, integrity, truthfulness, responsibility or confidence of the Board of Education or the school administrators of said school district in carrying out their official duties.

A. Paragraph 1 charges that the Board of Education

have deviated extremely from the original plans of the two new high schools.

B. Paragraph 2 by the use of the phrase: "Promises are promises or are they?" Mr. Pickering directly questions all of the items specified in paragraph 2 of the Bill of Particulars.

C. Paragraph 3 refers to the "Stop at Nothing" attitude of the board.

D. The statement that the superintendent told the teachers "any teachers that oppose the referendum should be prepared for the consequences."

E. The statement, "That's the kind of totalitarianism teachers live in at the high school and their children go to school in."

F. The statement that the board, by giving free lunches to athletes is causing students to pay an additional 5¢ for their cafeteria meal.

G. The statement that $50,000.00 or more is being paid to transport athletes.

H. The statement that teachers salaries have not been paid.

I. The statement that the taxpayers were really taken to the cleaners.

J. The statement that the Board of Education is trying to push tax supported athletics down our throats.

K. The statement that the public doesn't know who to trust with any more money.

L. The statement that the freedom of signing a letter as a teacher has been taken away by the administration.

M. The question, "do you really know what goes on behind those stone walls at the high school?"

3. State specifically what statements or comments in said publication contain innuendoes to the effect stated in paragraph 2 hereof.

A. To see just how far the two new high schools have deviated from the original promises by the Board of Education.

B. In regard to the allegations that the track is not of regulation distance, the question is then asked: "Whose fault is that?" "Oh, I forgot it wasn't supposed to be there in the first place." "It must have fallen out of the sky."

C. "Promises are promises or are they?"

D. "Stop at Nothing" attitude.

E. "Threats, take away something, these are insults to voters in a free society. We should try to sell a program on its merits, if it has any."

F. "The taxpayers were really taken to the cleaners."

4. State specifically what member or members of the Board of Education are or may be injured by the said publications in any of the respects mentioned in the notice of dismissal.

The entire make-up of the present board and all former members of the board who were members since 1961.

5. State specifically the names of the school administrators of said school district concerning whom any untrue or false statements are made in said publication and what statements therein apply to each person so named.

Dr. William H. Blatnik.

A. "Any teachers that oppose the referendum should be prepared for the consequences."

B. Did you know, that those letters had to have the approval of the superintendent before they could be put in the paper.

C. To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse.

D. The taxpayers were really taken to the cleaners.

E. I must sign this letter as a citizen and taxpayer and voter, not as a teacher, since that freedom has been taken away from the teachers by the administration.

6. State specifically in what manner, if any, statements or comments in said letter in any way or manner involved or damaged the professional reputations of any of said administrators or the board of education or any of the members thereof. Please state the names of the administrators and members of the board, if any, so injured or damaged.

The entire letter with its previously specifically identified false statements and innuendoes would damage the professional reputation of the administrators and the members of the Board of Education. The answer to the previous questions indicate specifically the areas of the letter referred to. Statements that accuse the administration of being totalitarian and of threatening the school teachers and further of taking the public to the cleaners *per se* damage the reputation of the entire administrative staff of said school. Statements that accuse board members of deviating substantially from promises, of implying that promises made by the board were not intended to be kept; of accusing the board of permitting the taxpayers to be taken to the cleaners; of promoting an athletic program to the detriment of the educational program; of permitting cafeteria charges to be increased to promote free lunches for athletes and the many other things referred to in the answer to the first four (4) questions *per se* damage the

reputation of the entire board of education of said school district. This is true not only of the present board but the board members who have not succeeded themselves since 1961. The names and addresses as requested in this question are attached hereto and a part hereof.

7. State specifically what statements and comments have in any way or manner involved or damaged the reputation of said school district.

See answer to request for bill of particulars 1, 2, 3, 4 and 6.

8. State specifically what statements or comments in said publication are disruptive of the discipline of the teachers of said school district, and what disruptions have occurred.

The charge in the notice of dismissal states in part as follows: ". . . said statements, comments and questions contained in said letter written and caused to be published by you seriously involved and damaged . . . the reputation of the schools of this district and are and will be highly disruptive to the discipline of the teachers, . . ." Statements that accuse the administration as indicated in the answer to questions 1, 2, 3, 4 and 6 of this bill of particulars would *per se* disrupt the discipline of teachers if the maker of said statements were allowed to do so without action on the part of the board and administration.

9. State specifically what statements or comments in said publication are or will be disruptive of the morals and harmony among the teachers, administrators, board of education or residents of said school district and what disruptions have occurred.

See answer to question No. 8.

10. State specifically the names of said teachers, administrators, board of education and residents.

The entire staff of the district as well as its administration and all present board members and board members since February of 1961.

11. State specifically what statements and comments in said publication have tended or will tend to foment controversy, conflict, or dissension among said teachers, administrators, the board of education or any member or members thereof, or residents of said school district.

See answer to questions 1, 2, 3, 4 and 6.

12. State specifically what statements or comments in said publication have or will hereafter jeopardize the welfare of the schools of the said school district.

See answer to questions 1, 2, 3, 4 and 6.

13. State specifically what statements or comments in said publication, if any, are deemed by you to have been made without justification.

See answer to questions 1, 2, 3, 4 and 6. Summarizing, the entire letter is one series of either untruths, half truths or mis-statements. It is a conglomeration taken out of context of the original bond issue proposal which provided for two two-year high schools which was defeated and the second bond issue proposal which provided for a four-year west side high school and a two-year east side high school, which second proposal was successful and the recent referendums for a tax rate increase for the educational fund and for the transportation fund.

14. State specifically what statements or comments contained in said publication contained innuendoes resulting in the damage complained of in the notice of dismissal.

See answers to questions 1, 2, 3, 4 and 6.

BOARD OF EDUCATION,
TOWNSHIP HIGH SCHOOL DISTRICT
No. 205,
WILL COUNTY, ILLINOIS,
By KRUSEMARK & BERTANI,
/s/ LOUIS R. BERTANI.

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APPENDIX C.

RESOLUTION.

Whereas, The Board of Education of Township High School District Number 205, Will County, Illinois, duly passed and adopted a resolution at its regular meeting held on the 8th day of October, 1964, dismissing tenure teacher, Marvin L. Pickering, effective December 30, 1964, for the charges, causes and reasons therein set forth and found not to be remediable; and

Whereas, said teacher, Marvin L. Pickering, was personally served with notice of such charges, reasons and causes and a bill of particulars thereof on October 9, 1964; and

Whereas, said teacher, Marvin L. Pickering, duly requested a public hearing on said charges in writing within ten (10) days after the service of such notice; and

Whereas, said teacher, Marvin L. Pickering, subsequently requested a further bill of particulars of said charges which the Board of Education duly furnished him; and

Whereas, the public hearing on said charges on account of said causes and reasons was duly held on November 19th and 20th, 1964 whereat said Marvin L. Pickering appeared personally and by his attorney; and

Whereas, said public hearing was duly adjourned to December 2, 1964, at 7:30 o'clock P. M., at the Library of the Lockport Central High School, located at 12th and Jefferson Streets, Lockport, Illinois, for decision pursuant to taking matter under advisement; and

Whereas, the President of this Board of Education duly

called a special meeting of this Board of Education pursuant to law by giving notice thereof in writing by mail more than forty-eight (48) hours before such meeting to each board member, stating the time, place and purpose of the meeting, said special meeting having been called to be held concurrently with such adjourned public hearing for the sole purpose to consider and determine by decision the charges made and the issues raised in the aforesaid public hearing and to pass and adopt a resolution deciding said charges and issues and to take any necessary action in regard thereto; and

Whereas, this Board of Education now duly meets concurrently in adjourned session of said public hearing and in duly called special meeting to make such decision.

Now, therefore, be it and it is hereby resolved by this Board of Education of Township High School District Number 205, Will County, Illinois, as follows:

Section 1. That this Board of Education having fully considered the charges made against teacher, Marvin L. Pickering, on account of the causes and reasons for his dismissal all as set forth in said resolution passed and adopted October 8, 1964; and the proceedings had in the public hearing duly held on November 19th and 20th, 1964, at the written request of said Marvin L. Pickering, finds and decides from the sworn testimony and exhibits introduced at said public hearing that the causes and reasons for such dismissal and charges made by this Board of Education against said Marvin L. Pickering on account thereof are true, fully proven and supported by the evidence and that no meritorious or sufficient defense was interposed thereto or proven by said Marvin L. Pickering.

Section 2. That this Board of Education finds and decides that said causes and reasons for dismissal and its charges proven on account of them are not remediable and that it is in the best interests of this School

District and the schools of this School District that said teacher be dismissed.

Section 3. That the action of this Board of Education in its said resolution of October 8, 1964, dismissing said Marvin L. Pickering as a teacher of this School District effective December 30, 1964, be and the same is hereby approved and he is hereby dismissed from his employment by this School District as such teacher effective December 30, 1964.

Section 4. That a copy of this resolution be served upon said Marvin L. Pickering as notice of the decision of this Board of Education.

Passed and adopted this 2nd day of December, 1964.

/s/ WILLARD A. ANDERSON,
President, Board of Education.

Attest:

/s/ FELIX L. BORIO,
Secretary Pro Tempore,
Board of Education.

APPENDIX D.

OPINION OF THE CIRCUIT COURT FILED MARCH 2, 1966.

After public hearing, dismissal of tenure teacher Marvin L. Pickering was approved and confirmed by Board Resolution finding the charges proved, not remedial, and the dismissal in the best interests of the School.

On administrative review, the court will set aside the final administrative action if the action is without substantial foundation in the record or is manifestly against the weight of the evidence. The best interest of the school is the guiding star of the board and the interference of the court is justified only where a board acted capriciously, maliciously and arbitrarily.

In this case, I find the action of the board is supported by substantial evidence and is not capricious, malicious or arbitrary.

The proper and efficient education of children is a vital and important function of state government. The state has a real concern in the integrity of the school, and the legislature may specify the conditions and reasons for dismissal of the teacher. The calling of teacher is so intimate, the duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that the legislature cannot enumerate all such possible grounds. Therefore, the legislative standard in the statute that the board has the power to dsimiss any teacher "whenever, in its opinion, the interests of the schools require it" is constitutionally sufficient. It is not a standard so vague and indefinite as to be a denial of due process.

That the freedom of speech is a highly protected right

is not denied; the judiciary has been zealous in protecting the rights of free speech, press and assembly. Freedom of speech may be limited only for strong and weighty reasons. The public interest to be protected must be of such importance that it overrides the right of free speech.

The constitutional question squarely presented in this case is whether or not there is any public interest to be protected which is so important that it overrides Pickering's freedom of speech. I answer yes. The state has the right and duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society. By statute, the legislature empowered the board to dismiss the teachers when, in its opinion, the interests of the school require it. The interests of the school is patently an overriding public interest.

Pickering's conduct was adverse to the interests of the school. The board decided that the interests of the school required his dismissal. Freedom of speech does not protect the job of an employee whose conduct is against the interests of his boss.

It is the judgment of this Court that the final administrative decision of the Board of Education be affirmed.

Defendant's attorneys are directed to prepare formal order and present same to the Court for signature.

MICHAEL A. ORENIC,
Circuit Judge.

ORDER ENTERED MARCH 25, 1966.

Upon due notice to plaintiff and defendant this cause comes on for hearing upon the complaint for administrative review of plaintiff, Marvin L. Pickering, and the answer of the defendant, Board of Education of Township High School District Number 205, Will County, Illinois, consisting of the original record of the proceedings had before it under review, and the Court having review, and considered said complaint; said record of proceedings had before this Board of Education filed herein; the written briefs and arguments of said parties and the oral arguments of counsel, and the Court having taken this cause and the aforesaid matters under advisement and having duly considered the same and now being fully advised in the premises finds that it has jurisdiction of the subject matter of this cause and parties thereto and that the final administrative decision of the Board of Education of Township High School District Number 205, Will County, Illinois, of December 2, 1964, dismissing plaintiff from employment by said District as a teacher, and constituting and being a part of said record of proceedings filed herein, is supported by substantial evidence, and the law is not capricious, malicious or arbitrary; is correct and should be affirmed.

It is, therefore, ordered, adjudged and decreed by the Court that the final administrative decision of December 2, 1964, rendered by the Board of Education of Township High School District Number 205, Will County, Illinois, constituting and being a part of the original record of proceedings filed in this cause by said Board of Education, be and the same is hereby affirmed.

Dated this 25th day of March, 1966.

Enter:

/s/ MICHAEL A. ORENIC,

Judge.

APPENDIX E.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the thirteenth day of March in the year of our Lord, one thousand nine hundred and sixty-seven, within and for the State of Illinois.

Present: ROY J. SOLFISBURG, JR., Chief Justice
JUSTICE WALTER V. SCHAEFER
JUSTICE RAY I. KLINGBIEL
JUSTICE BYRON O. HOUSE
JUSTICE ROBERT C. UNDERWOOD
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE DANIEL P. WARD
WILLIAM G. CLARK, Attorney General
ROBERT G. MILEY, Marshal

Attest: MRS. EARLE BENJAMIN SEARCY, Clerk

BE IT REMEMBERED, that, to-wit: on the 27th day of March, A.D. 1967, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Marvin L. Pickering, *Appellant,* vs. Board of Education of Township High School, District Number 205 Will County, Illinois, *Appellee.*	Appeal from Circuit Court Will County.
No. 40038	

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

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FILED
DEC 22 1967
JOHN F. DAVIS, CLERK

No. 510

In the
Supreme Court of the United States

OCTOBER TERM, A.D. 1967.

MARVIN L. PICKERING,
Plaintiff-Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,
Defendant-Appellee.

On Appeal From
The Supreme Court of Illinois

BRIEF OF PLAINTIFF-APPELLANT

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Of Counsel
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MARY LEE CULLEN LEAHY

The Scheffer Press, Inc.—ANdover 3-6850

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D. 1967.

No. 510

MARVIN L. PICKERING,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Defendant-Appellee.

On Appeal From
The Supreme Court of Illinois

BRIEF OF PLAINTIFF-APPELLANT

OPINIONS BELOW

A. The Circuit Court of Will County, Illinois, rendered a written opinion which is set out in the appendix at App. I, 34.

B. The Illinois Supreme Court delivered a written opinion at 36 Ill. 2d 568, 225 N.E. 2d 1. The Illinois Supreme Court opinion is set out at App. I, 134.

JURISDICTION OF THE COURT

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (2).

Plaintiff specifically challenges *Ill. Rev. Stat.*, Ch. 122, Sec. 10-22.4 in so far as it allows dismissal of teachers for "other sufficient cause" or when in the "opinion" of the school board "the interests of the schools require it," as being constitutionally void for vagueness.

Plaintiff also challenges the statutory scheme controlling teacher dismissals in so far as it provides for a hearing before the same board of education which dismissed him (*Ill. Rev. Stat.*, Ch. 122, Sec. 24-12) and in so far as it provides that on review by a court the findings and conclusions of the board shall be considered *"prima facie"* true (*Ill. Rev. Stat.*, Ch. 110, Sec. 274).

The above statutes have remained essentially the same during the pendency of this case. Plaintiff contends that the use of these statutes by the board to effect his dismissal for writing a letter critical of school officials violated his rights of free speech under the First and Fourteenth Amendments and that the refusal to apply rules applicable in free speech cases deprived him of due process rights under the Fourteenth Amendment.

Plaintiff attacked the entire procedure during the hearing (App. I, 84). Plaintiff attacked the action of the board on review both as to First Amendment free speech rights and as to Fourteenth Amendment "due process" rights (App. I, 7, para. 1 and m).

Plaintiff maintained his position in the Supreme Court of Illinois. (See Appellant's brief there).

Plaintiff relies on *Dahnke-Walker* v. *Bondurant*, 257 U.S. 282, 425 Ct. 106 (1921) as authority for invoking the jurisdiction of this Court. That case noted:

1) the action under the state statute must be challenged as unconstitutional in the state court.

2) the state court must uphold the validity of the statute.

3) the statute need not be claimed invalid in toto.

Plaintiff believes he has met these requirements. See also *Bantam Books Inc.* v. *Sullivan,* 372 U.S. 58, 83 S. Ct. 631 (1963) and *Kingsley International Pictures Corp.* v. *Regents of the University of New York,* 360 U.S. 684, 79 S. Ct. 1362 (1959).

The Illinois Supreme Court rendered its decision on January 19, 1967 and denied plaintiff's petition for rehearing on March 27, 1967. Plaintiff filed his Notice of Appeal on June 21, 1967. The case was docketed in this Court on August 17, 1967. Probable jurisdiction was noted on November 6, 1967.

CONSTITUTIONAL PROVISIONS AND STATUTES

A. UNITED STATES CONSTITUTION

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. ILLINOIS REVISED STATUTES (1963)

CHAPTER 122

Sec. 10-22.4 Dismissal of Teachers. [A board has power] to dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to 24-15, inclusive. Marriage is not a cause for removal.

C. ILLINOIS REVISED STATUTES (1963)

CHAPTER 122

Sec. 24-12 (Pertinent Sections) If the dismissal or removal is for any other reasons or cause [than decrease in number of teachers is required] it shall not become effective until approved by a majority vote of all members of the board upon specific charges and after a hearing, if a hearing is requested in writing by the teacher within 10 days after the service of notice as herein provided. . . . The decision of the board as to the existence of reasons or causes for dismissal or removal shall be final unless reviewed as provided in Section 24-16 of this Act.

D. ILLINOIS REVISED STATUTES (1963)

CHAPTER 110

Section 274 Scope of Review. Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct.

QUESTIONS PRESENTED FOR REVIEW

1. Does *Illinois Revised Statutes,* Chapter 122, Sec. 10-22.4 which empowers Boards of Education to dismiss teachers, place an unconstitutional limitation upon the exercise by teachers of the right of free speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution?

a. Has appellant's right of free speech been infringed by the school board's dismissing him under this statute because appellant wrote and published a letter which was critical of the Board of Education and administration but which did not contain statements that were knowingly or recklessly false?

b. Does the statute provide clear and precise language which advised appellant before he wrote the letter that he would be subject to dismissal or is the statutory language unconstitutionally "void for vagueness?"

2. Is the decision of the Illinois Supreme Court itself an unconstitutional limitation on appellant's right of free speech and is the decision also unconstitutionally vague?

3. Prescinding from the particular statute and decision, can appellant, or any public school teacher, be dismissed for writing and publishing statements critical of his Board of Education and administration when the statements are substantially correct?

4. Does the mere fact that plaintiff is an employee of government automatically restrict or curtail his right to free speech as guaranteed by the Constitution?

5. Does an employment dismissal hearing comply with the Due Process requirements of the Fourteenth Amendment to the Constitution of the United States in a case in which a teacher has written and published a letter criti-

cal of his Board of Education and administration when the Board of Education acts as prosecutor of the cause, and the Board of Education also acts as the trier of facts and the findings of the Board of Education are entitled to be considered *prima facie* correct under the state statute permitting judicial review?

STATEMENT OF THE CASE

In September, 1959, Marvin L. Pickering began his duties as a regularly certified public school teacher for the Board of Education of Township High School District 205, Will County, Illinois (App. I, 99). At that time and subsequently Pickering was also a resident of the district.

During the next five years the board of education submitted four tax proposals to the voters of the district. Two concerned bonds for the construction of new schools. Two concerned tax rate increases. The material dates are:

February 25, 1961: The board asked the voters to approve a bond issue to raise $4,875,000 to erect two new schools (App. II, 17-26). This proposal was defeated.

December 2, 1961: The board submitted to the voters another bond proposal, this time calling for the authorization of a bond issue to raise $5,500,000 to build two new schools (App. II, 26-37). The proposal was passed. The bonds were issued and the schools were built.

May 23, 1964: The board submitted a proposal calling for an increase in the tax rate. The voters defeated the proposal.

September 19, 1964: The board submitted a second proposal calling for an increase in the tax rate. This pro-

posal was also defeated. It was this second tax rate increase proposal that brought Marvin Pickering from obscurity.

In the weeks which preceded the election, the Lockport Township High School District 205 Teachers Organization published a series of columns in the local newspaper, the *Lockport Herald* (App. I, 61; II, 9-15). Some of these columns urged passage of the September 19th tax rate increase proposal. In its July 30, 1964, column the organization said:

> Some curtailment of essential curricular offerings has already occurred. Continued refusal to provide funds must eventually result in more drastic reductions in curriculum, equipment and services (App. II, 11).

On September 17th the organization column said:

> Voting No on Saturday, Sept. 19, will mean that our students—many, leaders of the future—will be offered substandard educational opportunities which could lead to substandard outlooks in adult life (App. II, 15).

In the same September 17th issue the superintendent of the district had a letter published which said:

> An increase is needed in our present tax rates . . . By supporting these necessary tax increases we can continue to provide quality education. A defeat means that education and students will suffer. . . . We hope you will find a few minutes to vote on this proposition on September 19.
>
> Your Board of Education and Administration (App. II, 37, 38).

The superintendent's letter was distributed in mimeographed form to the voters on September 18th. The next day the voters of the district rejected the proposed tax increase.

Marvin Pickering had just started his sixth year of teaching in the district when the September 19th tax increase was defeated. In his first five years he had apparently taught without incident. The record contains nothing about his teaching ability. Whether he was the object of reprimand or the subject of special praise is not disclosed. Although he had actively supported one of the 1961 building bond proposals, he drew no special attention until a letter he submitted to the editor of the *Lockport Herald* on September 22, 1964, appeared in the September 24th edition of the newspaper.

On October 8, 1964, the Board of Education adopted a resolution dismissing him because of his statements in the letter (App. II, 6-8).

Being a tenure teacher, Pickering demanded a hearing pursuant to *Ill. Rev. Stat.*, Chap. 122, Sec. 24-12. He also demanded a Bill of Particulars. The hearing was granted and the board supplied an Answer to the Bill of Particulars specifying the parts of the letter to which it objected.

The basic charges against Pickering were that statements in the letter were untrue and that because they were untrue the reputations of the board, administration and the schools were injured; the statements would disrupt the discipline of the teachers; and the statements would tend "to foment controversy, conflict and dissension" among board, administration, faculty and residents of the district.

The board in its Answer to Bill of Particulars asserted that Pickering's letter was untrue in sixteen particulars. Pickering's response to this charge of factual inaccuracy was and remains that his statements were essentially correct. Additionally, Pickering's attorney took the position at the hearing:

> That all this testimony today is basically irrelevant because I think the real issue here is whether he has a right to write the letter, without reference to the fact as to whether every statement in it was true or untrue (App. I, 84).

The hearing provided by *Ill. Rev. Stat.*, Ch. 122, Sec. 24-12 is conducted by the Board of Education which brings the charges for dismissal. Pickering's hearing was conducted before the seven (7) members of the Board of Education.

The hearing was chiefly concerned with the accuracy or inaccuracy of the statements. No evidence was received concerning the reputations of the board members, administration or schools. No evidence was received concerning disruption of teacher discipline.

At the close of the hearing the Board adopted a summary resolution which found that the charges of the initial resolution and the Bill of Particulars had been proved (App. I, 25). The board concluded that the statements were factually untrue and that this resulted in *per se* injury to the reputations of the schools and its officials and would be *per se* disruptive of teacher discipline.

Pursuant to the Administrative Review Act *(Ill. Rev. Stat.*, Ch. 110, Par. 264-279) Pickering sued for review of his dismissal in the Circuit Court of Will County, Illinois. His complaint asserted denial

> of his property and personal rights without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States * * * of his right to freedom of the press and of speech in violation of the First Amendment of the Constitution of the United States (App. I, 7).

The Circuit Court held that the

> standard in the statute that the board has power to dismiss any teacher 'whenever, in its opinion, the interests of the schools require it' is constitutionally sufficient. It is not a standard so vague and indefinite as to be a denial of due process (App. I, 35).

The Circuit Court also held that the "interests of the school" . . . "override Pickering's freedom of speech." The Circuit Court concluded by affirming the dismissal.

Pickering appealed to the Illinois Supreme Court which affirmed (App. I, 154).

Thereafter, Pickering petitioned for a rehearing which was denied (App. I, 155). Pickering then took his appeal to this court.

No detailed analysis of the truth of falsity or circumstances surrounding the statements in his letter are set out here. Plaintiff will in Part VI of his argument cover this aspect of the case.

SUMMARY OF PLAINTIFF'S ARGUMENT

Plaintiff, a public school teacher, was dismissed because he wrote a letter which criticized the way the Board of Education and superintendent were operating the schools in the defendant school district.

Plaintiff contends that he has the right to publicly criticize public officials and that he did not cede that right when he became a teacher. Plaintiff submits that the general statutory authority for dismissing teachers *(Ill. Rev. Stat.* Ch. 122, Sec. 10-22.4) in so far as it allows dismissal for "other sufficient cause" or "when, in the opinion of the board, the interests of the schools requires it" is totally vague and cannot, constitutionally, be relied upon as a valid limitation on plaintiff's right of free speech. The failure of the Board of Education to as-

sert that it had a rule or regulation limiting free speech left plaintiff without any guide by which to gauge what he could or could not say. Plaintiff submits that his speech might be subject to reprisal under two circumstances:

1. He actually disrupted a government function or posed a real threat to the operation of government.

2. His statements fell beyond the protection of the first amendment.

As to the first, plaintiff submits that there was no showing that he disrupted the schools and that the board cannot prove there was by its *per se* theory.

As to the second, plaintiff submits that his right to publicly express opinions about public officials remains protected until his statements are proved "knowingly false" or "recklessly false". The board having made no such finding failed to place plaintiff's statements outside the constitutional protection of *New York Times* v. *Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964).

Plaintiff further contends that the Illinois statutory scheme which allows a board to frame charges against a teacher, move for his dismissal, hear evidence as judge, determine his punishment and then have their findings held *prima facie* true upon judicial review is a violation of plaintiff's due process rights. Plaintiff further contends that the Illinois Supreme Court's failure to make an independent review of the record in accord with the principles of *Jacobellis* v. *Ohio*, 378 U.S. 184, 84 S. Ct. 1676 (1964) was improper.

Finally plaintiff believes that the statements he made were substantially correct and that whatever rule is applied he should not be penalized for such statements.

ARGUMENT

I. PLAINTIFF WAS DISMISSED FROM HIS EMPLOYMENT AS A PUBLIC SCHOOL TEACHER BECAUSE HE EXERCISED HIS FIRST AMENDMENT RIGHT OF FREE SPEECH.

Marvin Pickering began his sixth year of teaching in the Lockport, Illinois High School system at a time when the school district was faced with financial problems. Attempts to pass a tax increase in May, 1964 had failed. The school board decided to try again in September. The District 205 Teachers Organization supported the proposal and published a series of columns in the local newspaper (App. II, 9-15). In its September 17th column the leaders of the organization said:

> ". . . A vote for the referendum will alleviate the immediate, drastic needs and allow present standards of education to continue.
>
> ". . . To those citizens who object to the referendum: Voting No on Saturday, Sept. 19, will mean that our students—many, leaders of the future—will be offered substandard educational opportunities which could lead to substandard outlooks in adult life" (App. II, 15).

The Superintendent of the district openly supported the tax increase, publishing a letter in the same edition of the paper distributing it to parents of the students the next day. His comments included:

> "The present .65 educational tax rate is inadequate to meet the teachers' salaries which alone total $1,297,746."
>
> "The present .02 cent transportation rate is inadequate—we borrow from the education fund to make ends meet."

> "By supporting these necessary tax increases we can continue to provide quality education. A defeat means that education and students will suffer" (App. II, 38).

Notwithstanding the concerted effort, the campaign failed. On September 19th the voters went to the polls and defeated the tax increase.

Hearing the results of the election, plaintiff decided to enter the debate. He composed a letter, submitted it to the editor of the *Lockport Herald* and on September 24th it appeared. Unlike the "District 205 Teachers" and the Superintendent's analysis, Marvin Pickering did not blame the voters—he blamed the school board.

Two weeks later to the day he was fired.

The reaction of the Board of Education to plaintiff's venture into the arena of public debate sharply contrasts with the basic concepts of free speech which this Court has enunciated:

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the republic, is a fundamental principle of our constitutional system." *Stromberg* v. *California*, 283 U. S. 359, 369, 51 S. Ct. 532, 536 (1931).

The Founding Fathers established the first provision of the Bill of Rights as the guarantor of free expression. Mr. Justice Brandeis, in his concurring opinion in *Whitney* v. *California*, 274 U.S. 357, 377, 47 S. Ct. 641, 648 (1927) summarized the rationale underlying the First Amendment:

> "Those who won our independence believed that the final end of the State was to make men free to

develop their faculties; and that in its government the deliverative forces should prevail over the arbitrary. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate, that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed."

This Court has further enunciated the special position of First Amendment rights in relation to other parts of the Constitution.

"The test of legislation which collides with the Fourteenth Amendment because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disap-

> pears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedom of speech and of press, of assembly, and of worship, may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger." *Board of Education* v. *Barnette*, 319 U.S. 624, 639, 63 S. Ct. 1178, 1186 (1943).

This limitation of government interference with First Amendment rights extends to acts of local school boards. As this Court also said in *Board of Education* v. *Barnette*, 319 U.S. 624, 637, 63 S. Ct. 1178, 1185 (1943):

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights . . . .
>
> "Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account. The action of Congress in making flag observance voluntary and respecting the conscience of the objector in a matter so vital as raising the Army contrasts sharply with these local regulations [saluting the flag and saying the pledge of allegiance] in matters relatively trivial to the welfare of the nation. There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution."

The instant Board of Education rejected the underlying rationale which supports free speech; it refused to recog-

nize the favored status of free speech; and, most significantly it apparently did not see itself as an arm of government which should foster rather than repress free speech.

Plaintiff lost his job as a teacher solely and exclusively because he entered the arena of public debate as had other teachers in the district and as had the superintendent. The board's dismissal resolution (App. II, 6-9) limits the grounds for its action to the fateful letter and to no other reason. Thus plaintiff was dismissed because he exercised his right of free speech.

II. PUBLIC EMPLOYEES ARE ENTITLED TO FULL FIRST AMENDMENT RIGHTS

Public employees enjoy full first amendment rights. Whether public employment itself is a right or a privilege, the enjoyment of it cannot be conditioned upon the renunciation of constitutional rights.

Like using the mails or attending a public school, public employment brings a person into contact with government and provides a possible occasion for limitation of constitutional rights. Such a limitation, however, must stand or fall on its own merits and cannot be justified on the theory that benefits received from government of and in themselves justify limitation of rights.

Thus a school pupil does not leave his first amendment rights in the cloak room when he attends school, *Board of Education* v. *Barnette,* 319 U.S. 624, 63 S. Ct. 1178 (1943), nor does the letter writer renounce his right to free speech when he deposits his letter in the mail box, *Lamont* v. *Postmaster General of the United States,* 381 U.S. 305, 85 S. Ct. 1493 (1965).

So also the public employee does not lose his right of free speech when he enters the public service. Never-

theless there still prevails in some quarters the belief that a public employee has no rights except those specifically granted him by his employer. The apparent source of this idea is *McAuliffe* v. *Mayor, Etc., of the City of New Bedford,* 155 Mass. 216, 29 N.E.2d 517 (1892) in which Mr. Justice Holmes said:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of the contracts."

This Court has in a number of decisions rejected this theory. In *State ex. rel Anderson* v. *Brand,* 303 U.S. 95, 58 S. Ct. 443 (1938) this Court upheld a teacher who contended the Indiana legislature had impaired her contract by repealing the act which had given her tenure. The implicit assumption of that case was that the petitioner as a public employee had no greater or lesser rights than any other citizen. There certainly was no implication that her public employment operated to suspend her rights under Article I, Section 10 of the Constitution.

However, this court has more directly met the question of the limitation of the rights of public employees starting with *United Public Workers* v. *Mitchell,* 330 U.S. 75, 67 S. Ct. 556 (1947). In that case this Court upheld the Hatch Act but in so doing recognized that the act and implementing rules provided a measure of interference "with what otherwise would be the freedom of the civil servant under the First, Ninth and Tenth Amendments." (330 U.S. at 95, 67 S. Ct. at 567). This Court noted that the act:

> "leaves untouched full participation by employees in political decisions at the ballot box and forbids only the partisan activity of federal personnel deemed offensive to efficiency. With that limitation only, employees may make their contributions to public affairs or protect their own interests, as before the passage of the act." 330 U.S. at 99, 67 S. Ct. at 569.

United Public Workers v. *Mitchell* was decided on the basis that public employees do have constitutional rights but the Hatch Act was a reasonable limitation. This Court said at 330 U.S. at 102, 67 S. Ct. at 570:

> "We do not know whether the number of federal employees will expand or contract; whether the need for regulation of their political activities will increase or diminish. The use of the constitutional power is for Congress, not for the courts."

Subsequent decisions of this court have continued to hold that public employees do have constitutional rights. These decisions have taken account of changing circumstances. More significantly, decisions have held that regulation of first amendment rights should not be determined by what a legislature (or school board) deems "reasonable." Instead this Court has in cases arising under the First Amendment subjected the decision of government bodies to independent judicial review, *Jacobellis* v. *Ohio*, 378 U.S. 184, 84 S. Ct. 1676 (1964).

Commencing with *Gerende* v. *Board of Supervisors*, 341 U.S. 56, 71 S. Ct. 565 (1951), this Court has in a series of cases decided the extent of constitutional rights of public employees under the First Amendment. Implicit in each of these decisions is the recognition that public employees do have rights, and that their public employment does not in itself justify diminution of those rights. *Adler* v. *Board of Education*, 342 U.S. 405, 72 S. Ct.

380 (1952), *Wieman* v. *Updegraff*, 344 U.S. 183, 73 S.Ct. 215 (1952), *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 82 S.Ct. 275 (1961), *Baggett* v. *Bullitt*, 377 U.S. 360, 84 S. Ct. 1316 (1964), *Elfbrandt* v. *Russell*, 384 U.S. 11, 86 S. Ct. 1238 (1966), *Keyishian* v. *Board of Regents*, 385 U.S. 589, 87 S. Ct. 675 (1967) and *Whitehall* v. *Elkins*, —— U.S. ——, 88 S. Ct. 184 (1967).

From *United Public Workers* to the present the recognition that public employees in general, and teachers in particular, do not cede constitutional rights by going to work for government has become more openly acknowledged.

Mr. Justice Black in his *dissent* to *United Public Workers* v. *Mitchell* stated at 330 U.S. 111, 67 S. Ct. 575:

> "There is nothing about federal and state employees as a class which justifies depriving them or society of the benefits of their participation in public affairs. They, like other citizens, pay taxes and serve their country in peace and war. The taxes they pay and the wars in which they fight are determined by the elected spokesman of all the people. They come from the same homes, communities, schools, churches, and colleges as do the other citizens. I think the Constitution guarantees to them the same right that other groups of good citizens have to engage in activities which decide who their elected representatives shall be."

In *Adler* v. *Board of Education*, Mr. Justice Douglas in his *dissent* said at 342 U.S. 508, 72 S. Ct. 392:

> "I have not been able to accept the recent doctrine that a citizen who enters the public service can be forced to sacrifice his civil rights (citing *United Public Workers* and *Garner* v. *Board of Public Works*). I cannot for example find in our constitutional scheme the power of a state to place its em-

> ployees in the category of second-class citizens by denying them freedom of thought and expression. The Constitution guarantees freedom of thought and expression to everyone in our society. All are entitled to it; and none needs it more than the teachers."

In *Wieman* v. *Updegraff*, 344 U.S. 183, 73 S. Ct. 215 (1952) the demarcation between public employees and other citizens became almost obliterated. Mr. Justice Black now *concurring* said at 344 U.S. 193, 73 S. Ct. 220:

> "We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven. And I cannot too often repeat my belief that the right to speak on matters of public concern must be wholly free or eventually be wholly lost."

Any distinction between public employees and other citizens became obliterated from *Wieman* down to *Elfbrandt*. Thus, the dissenting view in *Adler* has now become the majority opinion. Any residual doubts were removed by this court in *Keyshian* v. *Board of Regents*, 385 U.S. 589, 87 S. Ct. 675 (1967). Adopting the language of the Court of Appeals decision, (345 F. 2d 236, 239), this court said at 385 U.S. 605, 87 S. Ct. 685:

> ". . . the theory that public employment which may be denied altogether may be subjected . . . to conditions regardless of how unreasonable has been uniformly rejected (citing cases) . . . It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege."

In *Garrity* v. *New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967) this Court in even more explicit terms stated that entering public service does not cause a loss of constitutional rights.

"We conclude that policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." 385 U.S. at 500, 87 S. Ct. at 620.

Public employees are entitled to have their acts and statements judged by constitutional standards. Plaintiff as a public employee has no greater or lesser rights than other citizens. He was and is entitled to have his public statements about the defeated tax increase and the operation of the public schools judged by the standards which apply to all citizens.

III. DEFENDANT BOARD OF EDUCATION HAS ASSERTED NO OVERRIDING INTEREST WHICH MIGHT JUSTIFY A LIMITATION OF PLAINTIFF'S FIRST AMENDMENT RIGHTS

In order to justify a limitation of first amendment rights the state must assert a paramount interest. This Court, in *Herndon* v. *Lowry,* 301 U.S. 242, 258, 57 S. Ct. 732, 739 (1937) expressed the basic principle that the:

> ". . . power of a state to abridge freedom of speech and assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find justification in a reasonable apprehension of danger to organized government."

The first amendment right of free speech may be forced to yield to the superior right of government to maintain its own existence, *Schenck* v. *United States,* 249 U.S. 47, 39 S. Ct. 247 (1918); *Dennis* v. *United States,* 341 U.S. 494, 71 S. Ct. 857 (1951) and to the right of government to carry on its normal functions, *Cox* v. *Louisiana,* 379 U.S. 559, 85 S. Ct. 476 (1965). These interests are quite different from those asserted by defendant in the case at bar.

Ill. Rev. Stat., Ch. 122 Sec. 10-22.4 provides the grounds or interests which justify dismissing teachers. The board passed over the statutory causes "incompetence," "cruelty," "negligence," "immorality" and "not qualified to teach." The board thus removed from consideration any challenge to plaintiff's ability to teach. The record is devoid of any evidence that plaintiff was a poor teacher or that his letter writing did or would in any way affect his teaching. The board thus chose not to assert the one interest which might really be paramount—his classroom performance.

Using the two remaining general grounds "other sufficient cause" and "whenever the interests of the school require it" the board by negative inference identified the interests it deemed worthy of greater protection than free speech:

1. The reputation of the board, administration and schools.
2. Discipline of teachers.
3. Morale and harmony among the teachers, board, administration and residents of the district.
4. Avoidance of controversy, conflict and dissension among the teachers, board, administration and residents of the district.

Considering first, the reputations of the school, the board and the administration, an important threshhold question presents itself—does a governmental body have a "reputation" capable of vindication. This Court in *New York Times* v. *Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964) clearly answered the question in the negative. In so doing this Court noted the language of the Illinois Supreme Court in *City of Chicago* v. *Tribune Co.*, 307 Ill. 595, 601, 139 N.E. 86, 88 (1923):

> For good reason, no court of last resort in this country has ever held, or even suggested, that prosecutions for libel on government have any place in the American system of jurisprudence.

The Illinois Supreme Court in that case was confronted with a city suing a newspaper because of alleged injuries resulting from "untrue" and "malicious" statements made with intent to destroy the financial standing of the city. The newspaper demurred. The court thus faced with the basic question of criticism of government talked not in terms of libel and slander but in terms of free speech, giving that right the broadest possible meaning.

The "reputation" of a government body is not a legally cognizable interest in the first place, and certainly does not possess the quality of being "overriding and paramount." The second "damaged reputation," that of the Board of Education, has no greater standing than the school itself.

The interests which the board asserted in the reputation of the individual board members can be treated with the interest which the board asserted in the "professional reputation" of the school "administrators." It should be pointed out that the plural form of administrator is inappropriate for the only administrator involved is the district superintendent.

Initially a strike question arises as to whether a government body can itself be the guardian or protector of the reputation of its members and officials. Presumably these individual members and officials have a right to pursue remedies in civil actions to vindicate their reputations. Of course, they would be required to prove their cases in conformity with the principles laid down in *New York Times* v. *Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964).

Assuming that a board has a right to vindicate the reputations of its members and officials, a second and even more serious question arises—can the board jettison the standards which would be mandatory in the individual members' separate civil actions.

These questions point in one direction—the concern of the school board in this case should be with making sure its schools run efficiently and making sure its personnel are qualified, not in vindicating its own or its members' and its superintendent's reputations. Assuming, however, that the board has an interest in the reputation of its members and superintendent, that interest is not of such a paramount or overriding concern as to justify the suppression of free speech. This Court has recently removed any doubt of how the balance is struck between the right of free speech and the public official's interest in his reputation.

In *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 84 S. Ct. 710 (1964) this Court was confronted with a civil libel judgment which Alabama officials were attempting to enforce against the New York Times newspaper. The New York Times had published an advertisement in 1960 which was highly critical of Alabama law enforcement officers. The advertisement was in error in at least six particulars including absolutely false statements that officials padlocked college dining halls to starve students into submission.

This Court held that the interest of the public in having free and open debate is paramount. Using the language of *Sweeney* v. *Patterson,* 76 U.S. App. D.C. 23, 24, 128 F. 2d, 457, 458 (1942), which affirmed the dismissal of a Congressman's libel suit based upon a newspaper article charging him with anti-semitism in opposing a judicial appointment:

> Cases which impose liability for erroneous reports of the political conduct of officials reflect the obsolete doctrine that the governed must not criticize their governors . . . The interest of the public here outweighs the interest of appellant or any other individual. The protection of the public requires not merely discussion, but information. Political conduct and views which some respectable people approve, and others condemn, are constantly imputed to Congressmen. Errors of fact, particularly in regard to a man's mental state and processes, are inevitable . . . Whatever is added to the field of libel is taken from the field of free debate.

Thus in *New York Times* this Court directly met the central issue of the instant case and without dissent held that freedom of speech is paramount to the interest which a public official has in his reputation.

In *Garrison* v. *Louisiana*, 379 U.S. 64, 72, 85 S. Ct. 209, 214 (1964) this Court in a much shorter treatment of the issue in a criminal libel case concluded after reference to *New York Times*:

> "In any event, where the criticism is of public officials and their conduct of public business, the interest in private reputation is overborne by the larger public interest, secured by the Constitution, in dissemination of truth."

Having decided the crucial issue in favor of free speech generally, this court next turned to the question of what effect falsity has on free speech. In *New York Times* v. *Sullivan*, 376 U.S. at 279 this Court set out a rule which is capable of resolving the case at bar:

> The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the

> statement was made with "actual malice" . . . that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

The necessity of a finding that the remarks were "knowingly false" or "recklessly false" was echoed in *Garrison*, 379 U.S. at 73, 85 S. Ct. at 215:

> "Moreover, even where the utterance is false, the great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any except the knowing or reckless falsehood. Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and ascertainment of truth."

The constitutional protection afforded to persons criticizing public officials cannot be lost unless there is proof that the comments were not only false, but that they were also "knowingly" or "recklessly" false. Moreover, the burden of proof is on the public official and not on the critic.

The *Garrison* case provides a situation not unlike the instant case. Garrison, the District Attorney of Orleans Parish, Louisiana became involved in a dispute with the eight judges of the Criminal District Court of the parish. The District Attorney was not in the employ of the judges but they did control a Fines and Fees Fund which was used to defray expenses of the District Attorney's office. A dispute over this fund touched off a wider dispute between Garrison and the judges, resulting in a charge of criminal libel against Garrison for his criticism of the judges.

Although his employment brought him into regular contact with the judges and his obligations as an attorney

required him to be respectful to the court, this Court held that the public interest in free speech was superior to the reputation of the judges unless and until the criticism was "knowingly" or "recklessly false".

The Illinois Supreme Court, however, rejected the *New York Times* and *Garrison* standards asserting that they were libel cases and therefore not applicable to a dismissal situation.

Plaintiff submits that such a distinction is unreal and that the *New York Times* case has its vitality as a free speech case and demonstrates that the law of libel must accommodate itself to constitutional rights. It appears that this court agreed with plaintiff's position, because in *Bond* v. *Floyd,* 385 U.S. 116, 87 S. Ct. 339 (1966) this court held that the form of the restraint on speech—be it a libel action, being barred from public office or otherwise—is incidental to the essential question—the public interest in public debate including criticism of official positions. This court said in *Bond,* 385 U.S. at 136, 87 S. Ct. at 349:

> "We think the rationale of the *New York Times* case disposes of the claim that Bond's statements fell outside the range of constitutional protection. Just as erroneous statements must be protected to give freedom of expression the breathing space it needs to survive, so statements criticizing public policy and the implementation of it must be similarly protected. The State argues that the *New York Times* principle should not be extended to statements by a legislator because the policy of encouraging free debate about government operations only applies to the citizen-critic of his government. We find no support for this distinction in the *New York Times* case or in any other decision of this Court,"

In *Linn* v. *United Plant Guard Workers,* 383 U.S. 53, 86 S. Ct. 657 (1966) involved accusations and charges made in the course of labor dispute resulting in a libel suit. Seeing no special distinctions for the employer-employee field this court applied the *New York Times* rule:

> ". . . the most repulsive speech enjoys immunity provided it falls short of a deliberate or reckless untruth . . . We therefore limit the availability of state remedies for libel to those instances in which the complainant can show that the defamatory statements were circulated with malice and caused him damage."

The *Linn* case did not involve public officials so this Court adopted the *New York Times* standards "by analogy, rather than under constitutional compulsion . . . to effectuate the statutory design with respect to presumption . . ." 383 U.S. at 65, 86 S. Ct. at 664.

The *New York Times, Garrison, Bond* and *Linn* cases reveal that the underlying principle that a public official's interest in his reputation is generally inferior to the public interest in free speech is not dependent upon the law of libel but rather the law of libel and all other situations ripe for its application are dependent upon it.

Thus the Arizona Supreme Court relying on *New York Times* held that an applicant could not be denied admission to the bar simply because he had made highly critical statements about J. Edgar Hoover in *Nation* magazine, *Application of Levine,* 97 Ariz. 88, 397 P. 2d 205 (1965).

In *McFadden* v. *Detroit Bar Association,* 4 Mich. App. 554, 145 N.W. 2d 285 (1966), a Michigan Appellate Court upheld the refusal of a trial court to enjoin the distribution of a list of approved candidates which omitted the name of the petitioner, a candidate for judge. The court relying on *New York Times* reasoned that the interest

the candidate had in his own reputation was inferior to the right of free press.

Turner v. Kennedy, 332 F.2d 304 (8th Cir. 1964) involved the dismissal of an employee of the Federal Bureau of Investigation after he sent letters to a Senator and Congressman which were critical of the agency. The Civil Service Commission had found the employee "unsuitable for his position" and the employee had not challenged this finding. The Court of Appeals upheld the dismissal but Circuit Judge Fahy, noting that this unchallenged finding rendered his opinion "something of a paradox", nevertheless dissented because he did not approve of the proceeding below. Judge Fahy, noting that the letters fell within the sphere of the right of petition for relief of grievances, stated that the privilege which accompanied the sending of such a letter:

> "though not absolute, should be governed by the same standard as has been adopted by the Court in the Times case, namely, whether the statements were made with actual malice, that is, with knowledge that they were false or with reckless disregard of whether false or not." 332 F.2d at 307.

In *Swaaley* v. *United States*, 376 F.2d 857 (1967) the United States Court of Claims adopted Judge Fahy's dissent in upholding the right of a worker at a Navy shipyard to send a letter to the Secretary of the Navy.

The *Swaaley* decision explains in great detail that the worker's exercise of his right under the First Amendment to send a letter as a petition for redress of grievances must be judged by the standards of *New York Times*. The opinion leaves room for doubt, however, because it distinguishes the right of petition from the general right of free speech by apparently approving of the language

used in *Harrington* v. *United States,* 161 Ct. Cl. 432 (1962). That case involved the dismissal of a civilian Air Force employee for printing and circulating a pamphlet which alleged various kinds of waste and mismanagement.

The dismissal was upheld because the pamphlet was not a "temperate, documented, discussion of specific circumstances known to plaintiff which deserved airing." The pamphlet was also termed "unwarranted and defamatory" and the distribution of it violated the "obligation of loyalty each employee owes his employer."

Swaaley may stand for the proposition that government employees have the first amendment right of petition but not of free speech. This is an interesting concept in view of the Court of Claims reliance upon *New York Times* to support the right of petition. This is also peculiar in light of this Court's pronouncement that the first amendment rights of speech, press, assembly and petition are interwoven and interelated rights. They are in the language of this court "cognate" rights. *DeJonge* v. *Oregon,* 299 U.S. 353, 57, Ct. 255 (1937).

The court apparently takes the position that making public statements is a breach of the loyalty an employee owes his employer. Plaintiff suggests that this philosophy has been rejected by *Linn* v. *United Plant Guard Workers,* 383 U.S. 53, 65, 86 S. Ct. 657, 664 (1964) and by those cases which uphold the right of employees to publicly announce the facts of a labor dispute.

Furthermore, plaintiff submits that such a concept has no place in the public service for it would only subordinate the right of the public "to know" to the power of public officials to block information from reaching the public.

The only real effect of this so-called breach of loyalty is that citizens may know about government and the only

possible adverse effect is that some citizens may not think so highly of their government officials—but this effect on official reputations has been amply treated by *New York Times* and subsequent cases.

The benefits of such public statements is appropriately stated in *Application of Levine,* 97 Ariz. 88, 397 P.2d 205 (1965):

> Information known to government employees is not necessarily secret or confidential and unless its disclosure inimical to the security of the government, it should be debated uninhibitedly and robustly. 97 Ariz. at 97, 397 P.2d at 211.

Dr. Alexander Meiklejohn in his book *Free Speech and Its Relation to Self Government,* (1948), p. 88, put it as follows:

> "No one can deny that the winning of the truth is important for the purposes of self-government. But that is not our deepest need. Far more essential if men are to be their own rulers, is the demand that whatever truth may become available shall be placed at the disposal of all the citizens of the community. The First Amendment is not primarily, a device for the winning of new truth, though that is very important. It is a device for the sharing of whatever truth has been won. Its purpose is to give to every voting member of the body politic the fullest possible participation in the understanding of those problems with which the citizens of a self-governing society must deal. When a free man is voting, it is not enough that the truth is known by someone else, by some scholar or administrator or legislator. The voters must have it, all of them. The primary purpose of the First Amendment is, then, that all the citizens shall, so far as possible, understand the issues which bear upon our common life. That is why no idea, no opinion, no doubt, no belief, no counter-belief, no relevant information, may be kept from

> them. Under the compact upon which our constitution rests, it is agreed that men shall not be governed by others, that they shall govern themselves."

Or as Justice Schaefer said in his dissent below:

> "Teachers are not necessarily the best critics in matters of school finance and administration, but they are in closer contact with the actual operation of schools than anyone else and the public should not be deprived of their views."

Punishing those who criticize government works a disservice to the public interest because it inevitably chills the free inquiry and expression of opinions by the very individuals who are in the best position to contribute knowledgeable and constructive criticism—those on the "inside" of a government agency. To sanction such suppression of free speech cuts off a valuable source of information about the conduct of a most important public undertaking.

Even the court in *Swaaley* v. *The United States,* 376 F.2d 857 (1967) said the lower officials were not justified in acting as if the employee who wrote to the Secretary of the Navy:

> ". . . was practically delivering ammunition to the enemy. The Secretary was responsible for the successful operation of the Shipyard just as much as they were. He could be trusted not to misuse plaintiff's communication just as much as they could."

Plaintiff suggests that the residents of a local school district have a strong and legitimate interest in knowing what is going on in their schools and that a teacher is doing nothing wrong in telling them unless he speaks "knowing" or "reckless falsehoods."

Whether the interests here asserted by the board are characterized as the right to have their reputations free from blemish or to have employees who are "loyal" the interest of the public in open discussion subordinates those interests and requires that plaintiff and other teachers be free to speak unless they pass the limits set down in *New York Times* v. *Sullivan*, 276 U.S. 254, 84 S. Ct. 710 (1964).

Since it is now clear that the *New York Times* standard should be used as the measuring stick it becomes inescapable that plaintiff's letter, in so far as it attacks the reputation of the school and its officials is well within constitutional protection.

Indeed whatever dispute there may be as to whether the statements in his letter were true or false there is complete agreement that the statements are not knowingly or recklessly false for in its findings the board made no reference whatsoever to the statements as "knowingly false" nor as "recklessly false."

The Board of Education being bound by its own findings should be held to have infringed plaintiff's right of free speech.

The second general interest asserted by the board is that of good order and discipline among the teachers. Acknowledging the legitimacy of this interest plaintiff insists that there is not a scintilla of evidence that the publication of his letter *caused* or was followed by a period in which the teachers were unruly, did not perform their duties or that the teachers even reacted mildly.

Moreover, reliance upon "possible" or *per se* adverse effects conflict with constitutional requirements.

As this Court said in *Thomas* v. *Collins*, 323 U.S. 516, 530, 65 S. Ct. 315 (1945):

> "... any attempt to restrict those [First Amendment] liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger."

Assuming that a reaction among the teachers was more than mere speculation it still is improper to blame plaintiff, for as this Court noted in *Ashton* v. *Kentucky,* 384 U.S. 195, 86 S. Ct. 1407 (1966) it is improper to attach responsibility to a speaker "because his neighbors have no self-control. . . ."

The question of disruption of government activities has been given considerable ventilation by courts in several jurisdictions and the general rule is that in order to sustain a dismissal, impairment must be actual, not speculative.

California has treated this question in a number of cases. In 1962 a California Appellate Court in *Board of Trustees* v. *Owens,* 206 Cal. App. 2d 147, 23 Cal. Rptr. 710 (1962) held that there was no evidence:

> "on the decisive issue . . . whether defendant's conduct had resulted in an impairment of the teaching process or had raised disciplinary problems . . ."

Owens like Pickering had published statements critical of the Board of Education that employed him.

In *Belshaw* v. *City of Berkeley,* 54 Cal. Rptr. 727 (Ct. App., 1966), a fireman who had written a letter similar to Pickering's gained reinstatement because the government agency failed to prove impairment of the administration of public service.

Kinnear v. *City and County of San Francisco,* 61 Cal. 2d 341, 38 Cal. Rptr. 631, 392 P.2d 391 (1964); *Fort* v. *Civil Service Commission,* 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P.2d 385 (1964), *Bagley* v. *Washington Town-*

ship Hospital District, 65 Cal. 2d 499, 55 Cal. Rptr. 401, 421 P.2d 409 (1966), and *Rosenfield* v. *Malcolm,* 65 Cal. 2d 559, 55 Cal. Rptr. 505, 421 P.2d 697 (1967) each recognize that in limiting a constitutional right of an employee a restraint must "rationally relate to the enhancement of the public service." *Bagley* v. *Washington Township Hospital District,* 65 Cal. 2d 499, 55 Cal. Rptr. 401, 421 P.2d 409, 411 (1966).

The *Owens* court relied on *State* v. *Adams,* 69 So. 2d 309 (Fla. Sup. Ct., 1954), noting that the:

> flat prediction that the continued employment of defendant 'would undermine the educational program' . . . is necessarily speculative.

In *City of St. Petersburg* v. *Pfeiffer,* 52 So. 2d 796 (Fla. Sup. Ct., 1951) a fireman who purportedly accused his chief of "being incompetent and inefficient", was reinstated with the comment, "An employee may express himself freely so long as he does not impair the administration of the service in which he is engaged."

In *State* v. *Adams,* 69 So. 2d 309, 311 (Fla. Sup. Ct. 1954), the court came to grips with the objection that the appointment as principal of a person who had actively campaigned against the superintendent "would undermine and weaken the effectiveness of the superintendent." The court responded:

> This apprehension is necessarily speculative as it is based on the premise that the ill feeling generated in the campaign might result in the relator's being disloyal to the person whom she sought to defeat. If the relator proves insubordinate, inefficient or incompetent she may be dismissed regardless of the reason for her misdeed or her unfitness, but there is no logical reason now to determine that because of

> animosity growing out of the election the relator will inevitably be so recalcitrant that she be excluded from a position of authority.

In a later consideration of this same case, 74 So. 2d 65 (1954) the Florida Supreme Court held that

> it could *not* be logically inferred that because of the relator's political interest she would not work for the good of the schools in Duval County. (Emphasis added.)

The New York rule is stated in *Gersh* v. *Village of Tuckahoe,* 23 A.D. 2d 258, 260 N.Y. 2d 75 (1965):

> "Although removals on the ground of misconduct have been sustained because of improper criticism of public officials (*Matter of Sausbier* v. *Wheeler,* 276 N.Y. 246, 11 N.E. 2d 897; *Matter of Kern* v. *LaGuardia,* 264 App. Div. 627, 36 N.Y.S. 2d 346, affd. 289 N.Y. 776, 46 N.E. 2d 844), the actions of the parties removed under the circumstances of those cases established their unfitness to perform properly the duties of their office. At bar, the petitioner's conduct did not impair or affect the administration of the public service in which he was engaged. There is no rule which forbids public officers from commenting upon or expressing their opinion concerning matters which may be of public concern (*Matter of Dunning* v. *Turner,* 285 App. Div. 742, 140 N.Y.S. 2d 481, affd. 309 N.Y. 933, 132 N.E. 2d 311)."

Admittedly the status of the New York rule is questionable in view of *Puentes* v. *Board of Education* now pending in this court (No. 562).

In *Smith* v. *Board of Education,* 264 Ky. 150, 94 S.W. 2d 321 (1935) the Kentucky Court of Appeals held in favor of a superintendent who was dismissed after he filed charges against school board members with the State Board of Education. In this early case the court noted that a cause for dismissal:

> . . . must be a cause relating to and affecting the administration of the office and must be restricted to something of a substantial nature directly affecting the rights and interests of the public.

In *Appeal of Coates,* 47 Wash. 2d 51, 287 P.2d 102 (1955), the Washington Supreme Court ordered reinstatement of a principal who becoming engaged in a heated argument with some members of his board had used such statements as "communist," "black shirt," and "purge" in reference to the tactics of certain newly elected board members. The court distinguished classroom conduct from dealings with adults:

> Teachers are required to exercise a high degree of patience and self-control when dealing with their youthful charges; but in their relations with adults, including school board members, they should be judged by the ordinary standards of civility applicable to the particular relationship.

The Iowa Supreme Court has recently upheld firemen who violated the following rule:

> "No member of the Department shall give out any information relative to the Department, its operations, equipment and so forth unless permission by the chief has been granted." *Klein et. al.* v. *Civil Service Commission,* ..... Iowa ....., 152 N.W. 2d 195 (1967).

The firemen published statements regarding a labor dispute between their union and the department. The court upheld their right to publish and on the particular point of "disruption" the court concluded that although there is a legitimate interest in maintaining "order and discipline among the employees" there was "not the slightest proof plaintiff's conduct impaired the administration of the public service of which they were a part." 152 N.W. 2d 195, 200 (1967).

That the instant school board has a legitimate interest in avoiding disruption of its services is not denied. That any disruption resulted from plaintiff's letter is categorically denied. It is incumbent on the board to demonstrate that there really was disruption and that it was plaintiff's fault. Defendant has failed on both counts.

All of what has been said in regard to possible disruption of school activities applies with full force to the final two interests, "harmony" and "avoidance of controversy among the teachers, board administration and residents of the district." Interference with these two supposed interests not only was not proved but "harmony and avoidance of controversy" are legally insufficient reasons for limiting free speech. In fact "controversy" is one of the objects of free speech.

The board initially declared in the dismissal notice (App. I, 9) that plaintiff's statements:

> "Seriously involved and damaged the professional reputations of said Administrators and Board and the reputation of the schools of this District and are and will be highly disruptive to the discipline of the teachers and the morale and harmony among teachers, administrators, Board of Education and residents of this District, and which said statements and comments will tend to foment controversy, conflict and dissension among them and jeopardize the welfare of the schools of this District."

This Court in *Terminello* v. *Chicago*, 377 U.S. 1, 60 S. Ct. 894 (1948) stated:

> "Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have

> profound unsettling effects as it presses for acceptance of an idea. This is why freedom of speech, though not absolute, *Chaplinsky* v. *New Hampshire, supra,* pp. 571-572, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest." 377 U.S. at 4.

The language of the dismissal notice and that of this Court could with minor editing be interchanged. Plaintiff must deny that the allegation that his letter would "foment, controversy, conflict and dissension . . ." had any evidentiary basis, but if upheld by operation of a *per se* presumption of their existence they nevertheless are the very ends of free speech.

Reviewing the interests asserted by the board—the reputation of public officials—good order and discipline—harmony—lack of controversy—it becomes apparent the board has not established as to any interest that:

1. It is of such overriding concern as to justify limitation of plaintiff's right of free speech.
2. AND it was in any real danger of actually being adversely affected.

IV. PLAINTIFF WAS DISMISSED BY AUTHORITY OF A STATUTE WHICH IS UNCONSTITUTIONALLY VOID BECAUSE IT IS VAGUE

The Board of Education, in seeking authority to dismiss plaintiff, looked to Section 10-22.4 of Chapter 122 of the Illinois Revised Statutes which authorizes dismissal of teachers for:

> "incompetency, cruelty, negligence, immorality, or other sufficient cause and . . . when in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it . . ."

In view of the intentional and overt limitations on First Amendment rights called for by the loyalty oath requirements of *Ill. Rev. Stat.*, Ch. 127, Sec. 166 (a) and (b), which prohibit advocacy of violent overthrow of the government, the absence of a parallel limitation of speech critical of public officials raises a reasonable inference that the dismissal statute can in no legitimate way restrict the free speech of public employees in criticizing public officials.

But, if indeed the dismissal statute contains the seeds of a legitimate limitation of teacher's rights to free speech, then the language of this Court in *Connally* v. *General Construction Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127 (1926) becomes relevant:

> "In the light of our decisions, it appears upon a mere inspection that these general words and phrases are so vague and indefinite that any penalty prescribed for their violation constitutes a denial of due process. It is not the penalty itself that is invalid but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all."

The *Connally* decision places upon government the duty to make determinations according to objective rules or standards. The reasoning is simple enough. In *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453, 59 S. Ct. 618, 619 (1939) this Court said "All are entitled to be informed as to what the State commands or forbids." And in *United States* v. *Cardiff*, 334 U.S. 174, 176, 73 S. Ct. 189, 190 (1952) the Court added, "Words which are vague and fluid . . . may be as much of a trap for the innocent as the ancient laws of Caligula."

A.B. Small Co. v. *American Sugar Refinery Co.*, 267 U.S. 233, 45 S. Ct. 295 (1925) and *Jorden* v. *DeGeorge*, 341 U.S. 223, 71 S. Ct. 703 (1951) remove any thought

that the "void for vagueness" doctrine is applicable only in criminal cases. The *Small* case emphasized that it was "not the criminal penalty that was held invalid, but the execution of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all."

When the government limits *free speech*, it must proceed according to even more stringent standards. This was espoused by this Court in *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 287, 82 S. Ct. 275 (1961):

> "The vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedom affirmatively protected by the Constitution. As we said in *Smith* v. *California*, '. . . stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser.' 361 U.S. 147, at 151."

This Court reiterated this requirement of clear and precise language in *Ashton* v. *Kentucky*, 384 U.S. 195, 86 S. Ct. 1407 (1966):

> Vague laws in any area suffer a constitutional infirmity. When First Amendment rights are involved, we look even more closely lest, under the guise of regulating conduct that is reachable by the police power, freedom of speech or of the press suffer. We said in *Cantwell* v. *Connecticut*, . . . that such a law must be 'narrowly drawn to prevent the supposed evil' . . . and that a conviction for an utterance "based on a common law concept of the most general and undefined nature', . . . could not stand.

The language which this court in Ashton found void for vagueness was:

> "Criminal libel is defined as any writing calculated to create disturbances of the peace, corrupt the public morals, or lead to any act, which, when done, is indictable."

If this language is too vague to stand as a restriction on the right of free speech, it is patent that neither Section 10-22.4 of the Illinois School Code (*Ill. Rev. Stat.*, Ch. 122) nor any other standard employed by the Board of Education is language properly limiting free speech. In the absence of any statutory standard sufficient to limit free speech the most that defendant can demand is the application of the *New York Times* standard. But, as has been previously established, the use of the *New York Times* standard leaves plaintiff's letter to the *Lockport Herald* wholly within the protection of the First Amendment.

The instant school board has left each of its employees without any ascertainable guide line. It has thrust upon its employees the burden of guessing what can or cannot be said. The dismissal of plaintiff according to vague, illusory and non-existent standards has put other teachers in the district on notice that they may "avoid the risk of loss of employment, and perhaps, profession, only by restricting their conduct to that which is unquestionably safe. Free speech may not be so inhibited." *Baggett v. Bullitt*, 377 U.S. 360, 84 S. Ct. 360 (1964).

But plaintiff need not rely only upon a reading of the statute to reveal its vagueness. Judicial consideration of the statute removes all doubt. The trial court held (App. I, 35):

> ". . . the legislative standard in the statute [Chapter 122 Sec. 10-22.4] that the board has the power to dismiss any teacher 'whenever, in its opinion, the interests of the school require it' is constitutionally sufficient."

The precise language "whenever, in its opinion, the interests of the school require it" was under consideration in *Jepson* v. *Board of Education,* 19 Ill. App. 2d 204, 153 N.E. 2d 417 (1958) and the court said in direct reference to these words:

> "The question as to who shall determine what constitute cause has frequently been presented to the courts of this state and the rule to be deduced from the authorities is that *where the statute is silent, as in the instant case, as to what constitute cause,* the right to determine the question is in the tribunal having jurisdiction of the particular officer or employee." (Emphasis added.)

The court cited *Joyce* v. *Board of Education,* 325 Ill. App. 543, 60 N.E. 2d 431 (1945) and *Pearson* v. *Board of Education;* 12 Ill. App. 2d 44, 138 N.E. 2d 326 (1956).

It is perfectly clear then that this statute, being "silent," contains no ascertainable restriction on an employee's rights of free speech. But as has been previously established, restrictions on free speech must be affirmatively asserted; they cannot be left to definition after the fact. Plaintiff insists that the Section 10-22.4 is unconstitutionally vague, when considered as a limitation in free speech.

Assuming that the cited grant of power was intended to convey the authority to limit first amendment rights and that it is not an unconstitutional delegation to allow the school board to determine what standard will be used to limit these rights, then the Board's case "must collapse for the Superintendent in sweeping terms testified (App. I, 70):

> "There is no ruling, regulation, policy or otherwise of this school district, either promulgated by me or the School Board which requires school teachers to submit letters of this type for any approval before publication."

Indeed, the Board impaled itself on the horns of a dilemma. In its haste to assert that it did not limit teachers' rights, it swept away any colorable claim that it had a rule, regulation or policy that might allow restrictions of free speech.

Thus, after the fact, the Board determined that plaintiff must be dismissed, but in so doing the Board followed no guideline, let alone a standard which would meet the rigorous standards demanding clear and precise language which could withstand constitutional scrutiny.

Neither the foregoing statute or administrative-after the fact-ruling can comply with the standards set down by this court in *Wieman* v. *Updegraff*, 344 U.S. 183, 73 S. Ct. 215 (1952); *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 82 S. Ct. 275 (1961); *Baggett* v. *Bullitt*, 377 U.S. 360, 84 S. Ct. 1316 (1964); *Elfbrandt* v. *Russell*, 384 U.S. 11, 86 S. Ct. 1238 (1966); *Keyishian* v. *Board of Regents*, 385 U.S. 589, 87 S. Ct. 675 (1967), and *Whitehill* v. *Elkins*, U.S. 88 S. Ct. 184 (1967).

Plaintiff suggests that the decision of the Illinois Supreme Court itself provides no clear direction as to what a teacher can or cannot say.

The court first rejected the "New York Times rule" and instead of supplying any clear standard as a substitute asserted:

> "The issue here is not whether the board may be publicly subjected to false accusations but whether it must continue to employ one who publishes misleading statements which are reasonably believed to be detrimental to the schools" (App. I, 143).

Further elucidating its "standard" the court said:

> A teacher who displays disrespect toward the Board of Education, incites misunderstanding and distrust

> of its policies, and makes unsupported accusations against the officials is not promoting the best interests of his school, and the Board of Education does not abuse its discretion in dismissing him (App. I, 144).

While these two key excerpts may give some direction the only safe position any teacher may assume is to remain completely silent. The Illinois Supreme Court has apparently removed truth or falsity as a consideration. It apparently also removed scienter or good faith as a consideration. Black, *Law Dictionary* (4th Ed. 1951) p. 1151 defines "misleading" as follows:

> "Delusive; calculated to lead astray or to lead into error. *Diamond Drill Contracting Co.* v. *International Diamond Drill Contracting Co.*, 106 Wash. 72, 179 P. 20, 122. Instructions which are of such a nature as to be misunderstood by the jury, or to give them a wrong impression are said to be "misleading."

Considering the courts terminology as it applies to a teacher who is about to put pen to paper—Do the negative attributes of "misleading" attach to the writer and cause responsibilities only if there is an intention to mislead? Or do the negative attributes attach if the *words* that are used have the capacity to mislead even though there is no intention to mislead? Worse yet, if there is no intention to mislead and the words chosen would not ordinarily mislead but because of some readers' inability to read correctly they are misread, does responsibility attach?

The great difficulty facing a teacher can be seen in the one simple sentence which Marvin Pickering wrote and for which he was called to task. Pickering wrote:

> "letters by your Board and Administration have stated that teachers' salaries total $1,297,746 for one year." (App. I, 12)

Plaintiff made this statement because in the edition of the *Lockport Herald* which appeared on September 17, 1964 a letter which had been submitted by the Superintendent (App. 1, 87) contained the following language (App. II, 37):

> The present .65 educational tax rate is inadequate to meet the teachers' salaries which alone total $1,297,746 . . .
>
> Your Board of Education and Administration.

If Plaintiff's almost direct quotation of the letter of the superintendent falls within the category "misleading statements" then it is apparent that nothing any teacher could ever say would be safe from condemnation. Nevertheless the Board in its Bill of Particulars I, E (App. 1, 17) said:

> As to teachers' salaries stated in paragraph 3 of Mr. Pickering's letter we know of no letter written by either the Board or Administration that states teachers' salaries for the figure as indicated.

The real dispute here, even though the board incorrectly lodged its attack on the existence of the superintendent's letter was over what the word "teacher" meant. Pickering (thinking that the word "teachers" meant classroom teachers and did not include the administrators and other non-teaching staff) said in his letter that the superintendent's figure of $1,297,746 was too high and that it "must have been the total payroll." The record reveals that Pickering was right for the superintendent said the term teachers included "counsellors, principals and their assistants, their secretaries. . . . Also contingency." (App. I, 69).

As Justice Schaefer said in his dissent:

> "With respect to this matter the plaintiff was clearly more accurate than the board, and probably no less accurate than the superintendent." (App. I, 149)

Marvin Pickering could not have known that this statement would fall within the category "misleading." Nevertheless, a Board of Education has been allowed to make such a determination and the Illinois Supreme Court has said it will not interfere with it.

No further detailed analysis of the guidelines or lack thereof which the Illinois Supreme Court has supplied is necessary. The only safe course which teachers can take is to avoid saying anything.

It should be apparent that "other sufficient cause" or "best interests" are constitutionally void because they are vague. It should be even clearer that the complete absence of a school board rule restricting free speech has such insubstantial status that it can't even qualify as vague. The general concepts presented by the Illinois Supreme Court not only conflict with the constitutional rationale supporting free speech but they too are incapable of being understood. They are in the court's own language "misleading."

V. PLAINTIFF WAS DISMISSED UNDER A PROCEDURE WHICH VIOLATED HIS RIGHTS OF DUE PROCESS

Justice Schaefer in his dissent below characterized the procedure by which plaintiff was dismissed as "unseemly" if not "unconstitutional." (App. I, 147) That procedure is found in *Ill. Rev. Stat.*, Ch. 122, Sections 24-11 to 24-16. The key section, 24-12, is that which provides dismissal procedure for teachers who, like plaintiff, have entered upon contractual continued service or "tenure."

Without unduly analyzing the changes the tenure law made in teacher-board relations it can be said that in pre-tenure days a teacher would enter into a contract on a year to year basis, there being neither an automatic

renewal nor obligation to renew on either the board or the teacher. In the event of a breach of contract the matter was triable in court by a judge or jury according to ordinary contract principles.

The Tenure Act effected two fundamental changes for those who qualify by completing a two year probationary period. First, the contract becomes permanent until the teacher reaches 65 years of age. It may be terminated unilaterally by the teacher only during a brief period each summer and by the board only for cause as defined in Section 10-22.4, the provisions considered earlier in this brief. Second, if the board terminates for cause, (what would be a common law breach) the matter is not tried before a judge and jury but rather before the board itself.

The board formulates the charges, acts as prosecutor, then as judge, and finally determines the punishment. When the findings of the Board are taken for review the Administrative Review Act (*Ill. Rev. Stat.*, Ch. 110, Sec. 274) provides that no new evidence may be heard and:

> "The findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct."

This has been interpreted to mean that the decision of the school board will not be set aside unless as the Illinois Supreme Court says "it is without substantial support in the record." or "the decision will not be set aside unless it is against the manifest weight of the evidence." (App. I, 144) Whatever differences there are between these two standards both show a deference to quasi-legislative decisions and neither is as stringent as the rule of review set down for federal agencies by this

Court in *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 71 S. Ct. 456 (1951).

In capsule form "cause" is determined by the board, the sufficiency of the evidence is determined by the board, and its decision is subject only to a limited review. Justice Schaefer's criticism of this procedure is not alone.

In *Miller* v. *Board of Education*, 51 Ill. App. 2d 20, 200 N.E. 2d 838 (1964) an Illinois Appellate Court reversed a teacher dismissal because the plaintiff

> "was prevented from having a fair trial by the multiple capacities in which the School Board and its attorney were functioning." 51 Ill. App. 2d at 41.

The *Miller* Court quoted from a concurring opinion in another Illinois Appellate decision, *Eidenmiller* v. *Board of Education*, 28 Ill. App. 2d 90, 170 N.E. 2d 792 (1960) (Abst.) which interestingly drew support from the Illinois Supreme Court as appears in the following excerpt found at 51 Ill. App. 2d 20:

> "Our Supreme Court once said of a similar statute that, 'a statute which compels a litigant to submit his controversy to a tribunal of which his antagonist his judge and does not afford due process of law.'" *Commissioners of Drainage Dist.* v. *Smith*, 223 Ill. 417.

Other state courts have noted the peculiarity of this procedure and have either been critical or expressed special caution. In *Shackley* v. *Board of Education*, 51 Del. 537, 149 A. 2d 331 (Super. Ct. Del. 1959), rev. 52 Del. 237, 155 A. 2d 323 (Sup. Ct. Del., 1959), the lower court said of the merger of roles at 149 A. 2d 336:

> "The burden in this case is upon the Board of Education, and that burden is accentuated by the fact that the said Board is not only the complainant and

> the prosecutor, but the judge as well. In such situations, the substantial evidence rule is to be zealously guarded and protected."

The Delaware Supreme Court reversed on the merits but noted at 155 A. 2d 328:

> "There is no question but that a court under such circumstances will scrutinize carefully the act of such a body."

The lower Delaware Court quoted from *In re Larsen,* 17 N.J. Super. 564, 86 A. 2d 430, 436 (1952) in which Judge William J. Brennan Jr. now a member of this Court said:

> "Are we precluded when applying the substantial test from taking into account the implications of the merger of functions, merely because the Legislature has combined the functions in the Director? I think not. The measure of our duty is to set aside any administrative decision when we "cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, * * *". The substantiality of evidence must take into account whatever in the record fairly detracts from its weight."

Decisions of administrative boards of such character require a careful study and consideration of the whole record, with all its inferences and implications to make sure that there is substantial evidence or evidence on which "men may not reasonably differ" to support the Board's decision.

The Alabama Supreme Court in *State ex rel. Steele* v. *Board of Education of Fairfield,* 252 Ala. 254, 40 So. 2d 689, 695 (1949) said:

> "The anomaly in procedure which permits the board of education, an administrative body, to serve in the

> triple capacity of complainant, prosecutor, and judge makes it vitally necessary that in reviewing administrative decisions, courts zealously examine the record with the view to protecting the fundamental rights of the parties * * *."

Kentucky provides by statute for a *de novo* judicial review if there is a violation of principles of fair play (KRS 161.790 (6)). Referring to the propriety of such a statute in view of attacks that this was a violation of a constitutional requirement of separation of powers the Kentucky Court of Appeals held in *Osborne* v. *Bullitt County Board of Education*, 415 S.W. 2d 607 (1967):

> "We believe the principle of due process requires that certain actions of administrative bodies be fully and completely reviewed in de novo proceedings especially where due process has not been observed in the administrative proceeding."

It seems apparent in the case at bar that neither the Circuit Court of Will County nor the Illinois Supreme Court saw any special duty to carefully scrutinize the record even though there was a merging of functions which initially weighted the procedure against plaintiff. Nor did these courts recognize that this was not a case of a disinterested board which had the duty to hear evidence and remove a teacher, but rather that they were highly interested and were likely to be:

> "quick to take offense at statements which they feel impugn their motives, honesty and integrity. *Justice Schaefer's dissent*" (App. I, 152).

Nor did the courts below recognize the peculiar difficulties which plaintiff necessarily faced in preparing a case. Considering the fact that plaintiff was already dismissed, it could hardly be expected that many teach-

ers would come forward to provide support. Admittedly objections were not raised on this score, but such difficulties are inherent in a case of this sort while in cases in which a board has no special interest other than to gather facts and determine if a teacher is guilty of some deficiency in his teaching, fellow teachers will feel far less danger of reprisal.

Whether the board, in fact, was prejudiced, whether teachers, in fact, were afraid to come forward is irrelevant for the actual situation which this case presented demonstrated a need for scrutiny and a need for admonition to boards and reviewing courts that such cases require such careful scrutiny. Instead the Illinois Supreme Court expressed no great concern and made no cautionary statements. Plaintiff suggests that the Illinois Supreme Court by its refusal to provide judicial safeguards has made that section of *Ill. Rev. Stat.* Ch. 122, Section 24-12 (which controls dismissal procedures) and Chapter 110, Section 274 (which limits the scope of review) fertile grounds for the violation of teachers' rights of due process.

But of all reasons which should have prompted careful review, none is so compelling as that of the requirement of independent review because first amendment rights were central to the case.

As this Court said, *Jacobellis* v. *Ohio,* 378 U. S. 184, 84 S. Ct. 1676 (1964):

> "In other areas involving constitutional rights under the Due Process Clause, the Court has consistently recognized its duty to apply the applicable rules of law upon the basis of an independent review of the facts of each case. E.G., Watts v. Indiana, 338 U.S. 49, 51; Norris v. Alabama, 294 U.S. 597, 590. And this has been particularly true where rights have

been asserted under the First Amendment guarantees of free expression. Thus in Pennekamp v. Florida, 328 U.S. 331, 335, the Court stated:

> "The Constitution has imposed upon this Court final authority to determine the meaning and application of those words of that instrument which require interpretation to resolve judicial issues. With that responsibility, we are compelled to examine for ourselves the statements in issue and the circumstances under which they were made to see whether or not they . . . are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.'"

However, the Illinois Supreme Court took the view that it would reverse only if the decision is "without substantial support in the record" or is "against the manifest weight of the evidence," both of which standards fall below the *Universal Camera* test which is considerably below the requirements of *Jacobellis*.

Apparently the only protection available to plaintiff is an aroused electorate which would retaliate against the board at the next election for dismissing plaintiff if it were an unjust dismissal. This safeguard was referred to by the Illinois Supreme Court in *Donahoo* v. *Board of Education*, 413 Ill. 422, 109 N.E. 2d 787 (1953) when it said at 426:

> A board would not so readily dismiss when its reasons therefor will be submitted to the bar of public opinion.

The irony of this position comes through with special force when it is realized that plaintiff got fired because he attempted to inform "the bar of public opinion."

The whole concept of constitutional protection of free speech negates the coupling of retaliation with dis-

approval. Debate should be heated, but whether someone is allowed to speak at all should not depend upon approval by the electorate or the elected.

As this Court said in *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 63 S. Ct. 1178 (1943):

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

Plaintiff submits that the procedure by which he was dismissed is pecularly susceptible to abuse and requires the utmost supervision by reviewing courts. We agree with Justice Schaefer that:

> "The unseemliness, if not the unconstitutionality, of this procedure reinforces my doubt that the General Assembly intended that it should apply to the exercise of First Amendment rights" (App. I, 147).

But the majority concluded otherwise and provided no cautionary safeguards. As a result we agree with Justice Schaefer's conclusion:

> "A legislative system which, as in this case, casts them [board members] in the role of aggrieved victims who formulate, prosecute and punish charges based on their grievances is not, in my opinion, compatible with present standards of due process" (App. I, 152).

VI. PLAINTIFF'S STATEMENTS WERE SUBSTANTIALLY CORRECT

This section of the Argument will consider each of the statements which the board challenged as being false. The statement will be set out, the challenge and then a comment will be made.

PARAGRAPH 1:

"I enjoyed reading the back issues of your paper which you loaned to me. Perhaps others would enjoy reading them in order to see just how far the two new high schools have deviated from the original promises by the Board of Education. First, let me state that I am referring to the February through November, 1961 issues of your paper, so that it can be checked."

CHALLENGED BY BILL OF PARTICULARS 1A: (App. I, 17)

"The source of the majority of allegations contained in the letter is not the February through November 1961 issues of the Lockport Herald as indicated in paragraph 1 of Mr. Pickering's letter."

ALSO CHALLENGED BY BILL OF PARTICULARS 1B (App. I, 17)

"The first sentence of Mr. Pickering's letter states that others would enjoy reading the back issues of the Lockport Herald to see just how far the new high schools have deviated from the original promises of the Board of Education where, in fact, there has not been a substantial deviation."

COMMENT: As to the Source of plaintiff's information, plaintiff did not indicate that he was relying on the February through November 1961 issues of the paper but was referring to them so as to advise the reader which issues contained the "original promises."

Whether or not there had been deviations depends on whether plaintiff was referring to the first (February) or second (December) bond issue as the origin of the "original" promises. The architect testified that he did not draft his plans for the second bond issue until the latter half of 1961 (App. I, 102). However, plaintiff said that the "original promises" could be found in the February through November 1961 issues. If the architect is correct then plaintiff can only be referring to the "promises" as they related to the first (February) bond issue, otherwise he would not have directed the reader to a February issue of the paper for "original promises" that came into existence in the latter half of the year. It being established that plaintiff was referring to the February bond issue as the source of the "original plan" there can be no doubt that there were substantial changes —extensive testimony was made to this effect. Actually plaintiff's statement is no more than an opinion and is not a representation of fact.

PARAGRAPH 2:	"One statement in your paper declared that swimming pools, athletic fields, and auditoriums had been left out of the program."
CHALLENGED BY BILL OF PARTICULARS 1C (App. I, 17)	"In Paragraph 2 of Mr. Pickering's letter he states that athletic fields and auditoriums were originally left out of the program. This is not true."

COMMENT: Plaintiff did not make the affirmance but rather referred to a newspaper article which made the statement. The paper (App. II, 22), the February 21, 1961 edition of the Lockport Herald, carried a story saying:

> "Such items as swimming pools, athletic fields, auditoriums, etc., have been left out of this program in order to obtain as much classroom space as possible."

The school board apparently refused to recognize any reference to the February bond issue as the "original" referred to should be a basis for dismissal.

Plaintiff submits this very disagreement demonstrates the inconclusiveness of the Board's position.

PARAGRAPH 2: "In fact, Lockport West has a better athletic field than Lockport Central. It has a track that isn't quite regulation distance even though the board spent a few thousand dollars on it."

CHALLENGED BY BILL OF PARTICULARS 1D: (App. I, 17) "The athletic field at Lockport Central is regulation distance."

COMMENT: While there was some dispute as to what is regulation distance, there was general agreement that a running track should be 440 yards around (App. I, 92). Under oath the track coach at Lockport Central testified that the track is, in fact, only 407 yards distance (App. I, 92).

It would appear that plaintiff was correct.

PARAGRAPH 3: "Letters by your Board and Administration have stated that teachers' salaries total $1,297,746 for one year."

CHALLENGED BY BILL OF PARTICULARS 1E (App. I, 17)

"As to teachers' salaries stated in paragraph 3 of Mr. Pickering's letter we know of no letter written by either the Board or Administration that states teachers' salaries for the figure as indicated."

COMMENT: The superintendent specifically admitted writing the letter referred to (App. I, 78). He signed it "Your Board and Administration." The letter with the exact amount stated was published just one week prior to plaintiff's letter being published (App. I, 87). A second version of the letter was distributed to parents (App. I, 80; App. II, 37).

The letter was admitted in evidence (App. I, 80). The board did not withdraw this charge but presumably upheld its initial ignorance of the letter when it "found all charges to be proven." Thus plaintiff's dismissal was in part based on the Board's not knowing what the Superintendents had done.

PARAGRAPH 3:

"To illustrate further, do you know that the superintendent told the teachers, and I quote, 'Any teacher that opposes the referendum should be prepared for the consequences'?"

CHALLENGED BY BILL OF PARTICULARS 1-F (App. I, 17)

"The superintendent has never told the teachers the following: 'Any teachers that oppose the referendum should be prepared for the consequences'."

COMMENT: There is some conflict of testimony as to whether or not the superintendent said the words as

quoted. That the words or similar words were spoken by the superintendent is sufficiently clear from the testimony of Phillip Polley, a teacher in the District. He recalled the superintendent saying "You should be prepared to face the consequences", or "You should be willing to face the consequences" (App. I, 97). Lee Atwater, another teacher who said the superintendent didn't say the words, added (App. I, 94):

> "I don't recall exact words. However, it was clearly brought out that should this bond issue fail all would be affected by it. That is as much as I recall."

Considering the testimony of Phillip Polley and Lee Atwater, there are reasonable grounds for accepting plaintiff's version at least as to substance. Again the question is raised—Was the plaintiff so inaccurate and reckless as to make this challenge part of the dismissal charge? The superintendent (App. I, 70, 79) flatly denied making the statement. In view of the admittedly disputed testimony, there is every reason to believe that the plaintiff was much closer to the truth than either the superintendent or the Bill of Particulars.

This aspect of the case is similar to a conflict in testimony which arose in *Swaaley* v. *The United States,* 376 F.2d 857. Judge Nichols writing for the Court of Claims said:

> ". . . we do not share the idea that if two persons differ in their recollection of a conversation between them, one must be lying."

Additionally, in view of what had happened to plaintiff it should be expected that other teachers would be hesitant to express themselves in a way which would bring them into conflict with the superintendent.

CHALLENGED BY BILL OF PARTICULARS 1G (App. I, 17)	"As to paragraph 4 of Mr. Pickering's letter dealing with the letter entitled: "District 205 Teachers speak, 'It is not true that 98% of the school teachers are supposed to have agreed to this letter'."

COMMENT: Plaintiff's statement is absolutely and completely true, as verified by the teacher who handled the writing of the letter. (App. I, 64).

The article to which plaintiff referred carried an explanation at the beginning. (App. II, 13; I, 63)

> "It is written by members of a committee appointed by the executive board of the group which, last year, represented 98% of the teachers of the district."

Plaintiff, in his letter, simply and truthfully made clear what this statement meant. The group represented or had 98% membership, but only five or six wrote the article. The charge in the Bill of Particulars simply does not meet or attack the truthfulness or validity of plaintiff's statement. While the committee de-emphasized the smallness of its size and emphasized the largeness (98%) of the group it represented, plaintiff chose to do the opposite, a technique common in democratic societies and all the defendant's charge amounts to is an attempt to deny plaintiff the right to make truthful statements placing the emphasis where he deems it proper.

In any event, if there is a complaint to be made, it should properly be made by the group or persons affected. No objection was made by the teachers' spokesman, Mrs. Lund. In fact, she substantiated the truthfulness of plaintiff's statements.

PARAGRAPH 4:	"Did you know that those letters had to have the approval of the superintendent before they could be put in the paper?"
CHALLENGED BY BILL OF PARTICULARS 1H: (App. I, 18)	"Letters do not have to have the approval of the superintendent before they can be put in the paper."

COMMENT: It is apparent that the speedy dismissal of plaintiff is ample vindication of the statement. Actually, the charge is improperly placed for it attempts to reduce to a matter of fact the ultimate issue of the case.

It is true that the board in dismissing Plaintiff relied on no censorship statute nor on a rule of its own. But it is equally true that the teachers' handbook (App. I, 64, 65) raised a reasonable inference that censorship was intended.

The quoted material moves from the cordial declarative "Each teacher is invited . . ." and "He is also invited . . ." to the imperative ". . . check the material with the building principal before releasing it."

The import of the handbook comes clear when it says publishable material "should be submitted in triplicate to the publicity coordinator."

As a practical matter the committee did, in fact, "submit all these letters to the Superintendent". (App. I, 65)

There appears to be ample ground, particularly in view of plaintiff's dismissal, for finding that the board, without benefit of statute or formal rule, effectively maintained a gag rule.

PARAGRAPH 5:	"If the cafeteria is losing money, then the Board should not be packing free lunches for athletes on days of athletic contests."
CHALLENGED BY BILL OF PARTICULARS 1I: (App. I, 18)	"The cafeteria is not losing money because of packing free lunches for athletes on days of athletic contests."

COMMENT: Plaintiff did not draw a causal connection. The Superintendent indicated that athletes did in fact receive lunches for which they did not pay (App. I, 80) and the cafeteria, in fact, was losing money (App. I, 80). Interestingly, plaintiff did not draw a causal relation but as any normal person would, he implied "Why give free lunches if you're losing money?" The Superintendent explained that the money for the free lunches did not come out of the cafeteria fund but from the athletic fund so that the loss in the cafeteria was not actually caused by the free lunches. However, plaintiff had drawn no causal relation. In the normal course of debate, the next question which plaintiff would ask—"Why free lunches at all?"

PARAGRAPH 5:	"Whatever the case, the taxpayer's child should only have to pay about 30¢ for his lunch instead of 35¢ to pay for free lunches for the athletes."
CHALLENGED BY BILL OF PARTICULARS 1J: (App. I, 18)	"Lunch prices are not 35¢ rather than 30¢ because of packing of free lunches for athletes."

COMMENT: The Superintendent indicated that athletes did in fact receive lunches which they did not pay

for (App. I, 80). The cafeteria was in fact losing money (App. I, 80). The board presumably was in the best position to tell how many "free lunches" were provided, but no attempt was made to provide these figures nor to provide the amounts transferred from the althetic fund to pay for the lunches. The board thrust upon plaintiff the whole burden of proving complete accuracy. There is ample evidence upon which plaintiff could base a contention that lunches were costing more because of free lunches being provided athletes. In any event, the entire statement is essentially one of opinion and not fact. To say that this specification was properly includable in the Bill of Particulars or was a proper basis for dismissal of the plaintiff is unreasonable.

PARAGRAPH 6:	"But $20,000 in receipts doesn't pay for the $200,000 a year they have been spending on varsity sports while neglecting the wants of teachers."
CHALLENGED BY BILL OF PARTICULARS 1K: (App. I, 18)	"The school board is not spending $200,000.00 a year on varsity sports and is not neglecting the wants of teachers."

COMMENT: The next paragraph in the letter gave sufficient indication of the cost items to which the plaintiff referred. Some of the items were capital investments, some were not. The net effect of reading the two paragraphs together indicates that the author was not using strict accounting principles, but was attempting to show the general cost of athletics.

The auditor for the board admitted his inability to allocate costs accurately (App. I, 60). Plaintiff's tallies

reached more than $170,000 (App. I, 108-111) and he indicated an ability to produce more cost items. The plaintiff in testimony not seriously challenged listed numerous items which indicated that his was a more accurate picture of the cost of athletics than was that painted by the Board of Education, namely, $49,554.00 (App. I, 57).

As to the second part of the sentence, the statement that the wants of teachers are not neglected is a matter of opinion. The Superintendent affirmed that the "wants" of teachers were not satisfied (App. I, 82). This could and probably is and will remain an area of disagreement. But to assert as a matter of fact and use as a basis for dismissal any challenges to the position that the wants of teachers are not being neglected is arbitrary.

PARAGRAPH 7:	"You see we don't need an increase in the transportation tax unless the voters want to keep paying $50,000 or more a year to transport athletes home after practice and to away games, etc."
CHALLENGED BY BILL OF PARTICULARS 1L: (App. I, 18)	"As to paragraph 5 of Mr. Pickering's letter, the cost of transporting athletes home after practice and to away games and etc. is not $50,000.00.

COMMENT: Plaintiff's $50,000 figure is inflated. However, the board apparently gave no consideration to increased costs being includable in the "etc." and ignored that the Board was nearly $50,000 off in its transportation appropriation for 1963-64 (App. I, 58). The Board with professional accountants was as inaccurate as plaintiff.

PARAGRAPH 8:	"To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse."
CHALLENGED BY BILL OF PARTICULARS 1M, 1N (App. I, 18)	"As to paragraph 6 of Mr. Pickering's letter, football fields have not been sodded on borrowed money."
	"Teachers' salaries have always been paid."

COMMENT: The architect for the Board of Education testified (App. I, 103-104) that sodding of a football field was "done out of the bond issue" and that he presumed "that it is borrowed." Black's *Law Dictionary* (4th Ed. 1951) p. 224 calls a bond "A certificate or evidence of a debt." The board's construing of plaintiff's statement is unreasonable and strained. The challenge in the Bill of Particulars alters the meaning of the latter part of plaintiff's sentence. Plaintiff's statement did not state as a fact that teachers had not been paid but questioned the board's ability to pay. The testimony educed at the hearing amply supported plaintiff's doubts. The Board of Education had issued $500,000 of tax anticipation warrants for the fiscal year ended June 30, 1964 (App. I, 58). On the very night the Board voted to dismiss plaintiff it was also confronted with problems in meeting its payroll. (See App. Vol. II, 16—item 12)

That teachers salaries were affected can hardly be doubted. The "District 205 Teachers Speak" column of July 30, 1964 (App. II, 11) noted: "So far, one of the main economies has been the board's refusal to make any adjustments of the teachers' salary schedule."

The Superintendent, in the letter of which the Bill of Particulars denied knowledge, said in support of a tax

increase: "The 65 cent rate is insufficient to take care of this one budget item, teachers salaries." Considering the financial difficulty of the district, the plaintiff had good grounds to be apprehensive and to voice concern and criticism of policies which, as he saw them, had brought the district to this point.

PARAGRAPH 12:	"I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration."
CHALLENGED BY BILL OF PARTICULARS 2-O (App. I, 18)	"The freedom of a teacher to sign a letter as a teacher and have the same published has not been taken away from Mr. Pickering or any teacher of Township High School District No. 205 by this administration."

COMMENT: The very fact that defendant included the charge in its Bill of Particulars is sufficient proof of the point in issue. This statement is the ultimate issue in this case and as such is not properly placed. In any event, the teacher handbook, the practice of submitting manuscripts, and the firing of plaintiff indicate that plaintiff has good and sufficient grounds for stating this opinion.

PARAGRAPH 13:	"Since there seems to be a problem getting all the facts to the voter on the twice defeated bond issue, . . ."
CHALLENGED BY BILL OF PARTICULARS 2P (App. I, 18)	"The bond issue has not been twice defeated."

COMMENT: Plaintiff was in error. The school district conducted two bond issues in 1961, losing the first and passing the second. However, the district also held two elections to increase the education tax rates during 1964. Both were defeated. In view of the fact that the second election was conducted just five days before plaintiff's letter appeared in the newspaper and that the remainder of the paragraph clearly referred to events surrounding the election, it is apparent that this was a mere oversight which in no way caused any misunderstanding and certainly no damage.

That this is a true and accurate explanation is apparent for it is obvious that in preparing the Bill of Particulars, defendant's attorney saw no significance when they examined the letter for they made this their sixteenth point of challenge when it properly should have been their fourth item. The list of charges otherwise parallels plaintiff's letter.

Interestingly, the committee representing the 98% of the teachers made the same mistake in the July 30, 1964 Lockport Herald Article (App. II, 11) when its erroneously referred to a May "bond issue". But, of course, this committee was favorable to the Board and thus not subject to the same close scrutiny when the Superintendent approved the article before publication. The Board attorney also made the same error (App. I, 120).

If Marvin Pickering could be called to task for this harmless slip, the rest of the teachers in the district had better limit their comments to the weather—and they had better be careful what they say about it too.

Plaintiff submits that the foregoing review of the truth or falsity of his statements demonstrates that not only was plaintiff not guilty of making, knowing or reckless falsehoods but that he was substantially correct.

CONCLUSION

Plaintiff, like any other citizen had a right to criticize public officials without fear of reprisals such as being driven from his profession.

Plaintiff's dismissal should be reversed because:

1. The statements he made were entitled to constitutional protection because they were not, by the board's own findings, "knowngly" or "recklessly" false.

2. The grounds "other sufficient cause" and "interests of the schools" which authorized plaintiff's dismissal are an unconstitionally vague, limitation on free speech.

3. The procedure by which plaintiff was dismissed and his case was judicially reviewed violated his right of due process.

Plaintiff prays that the decision of the Illinois Supreme Court be reversed and judgment be entered in his favor.

Respectfully submitted,

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SUPREME COURT, U. S.

Office Supreme Court, U.S.
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No. 510

In the

Supreme Court of the United States

OCTOBER TERM, 1967.

MARVIN L. PICKERING,

Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Appellee.

Appeal from the Supreme Court of Illinois.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, ILLINOIS DIVISION, AMICUS CURIAE

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BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, ILLINOIS DIVISION, AMICUS CURIAE

INTEREST OF AMICUS

The American Civil Liberties Union, Illinois Division, which files this brief with the consent of the parties,* believes that the case at bar raises fundamental First and Fourteenth Amendment questions. The central issues are whether a public school teacher can be fired for criticizing the official actions of his School Board, and whether the Board can act as complainant, prosecutor, judge, and jury in the statutory proceedings required to discharge him.

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* Letters of consent have been filed with the Clerk of the Court.

STATEMENT OF THE CASE

Marvin L. Pickering, a tenured teacher at the Lockport Illinois East High School, wrote a letter to the editor of a local newspaper, the *Lockport Herald*. In it he discussed the history and merits of several school building proposals put forward by the School Board in the preceding two years. The substance of the letter is treated at length in Mr. Pickering's brief in this Court and in the majority and dissenting opinions in the Illinois Supreme Court. The history, substance and outcome of the various proposals to build new school facilities are complex. Pickering's letter was prompted by the last of these, a proposed tax-rate increase.

To promote its proposals the Board had hired a public relations firm, (T. 269-70, Abst. 77),* and published extensive press releases and pamphlets. (Pl. Ex. 3, T. 251, Abst. 74, Abst. II, 17; Pl. Ex. 4, T. 258, Abst. 75, Abst. II 22; Pl. Ex. 5, T. 267, Abst. 77, Abst. II, 26; Pl. Ex. 6, T. 271, Abst. 77, Abst. II, 30) Teachers were urged to distribute promotional literature to voters (T. 438, Abst. 99). The local teachers' organization had also supported the tax-rate increase in a series of articles which had been approved by the Superintendent and appeared in the *Lockport Herald* in the weeks preceding the election. (Def. Ex. 27, T. 190, Abst. 63, Abst. II 9) On September 19, 1964 the voters rejected the proposal. On September 22, 1964, Mr. Pickering submitted his letter to the editor, and on September 24th it was published.

The letter explained the voters' action as part of "a fight between the Board of Education that is trying to

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* R. refers to the Record; Abst. refers to Volume 1 of the Abstract unless otherwise indicated. T. refers to the Transcript.

push tax-supported athletics down our throats with education, and a public that has mixed emotions about both of these items because they feel they are already paying enough taxes, and simply don't know whom to trust with any more tax money." (R. 10, Abst. 40, Abst. 11, 14) Mr. Pickering attempted to illustrate the causes of the public feeling which defeated the tax-rate increase by reviewing discrepancies between what the Board had promised in prior proposals and the facilities actually built when one of the prior proposals was approved.

The Board took great offense to the letter. Charges against him were prepared at an informal meeting of Board members and the Superintendent. (T. 341-345, Abst. 86-87) Although Mr. Pickering had taught for five years without incident, on October 8, 1964 the Board adopted a resolution discharging him. As grounds for dismissal, the Board charged that his letter "contained many untrue and false statements and comments which . . . impugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education and the School Administrators of this District. . . ." The Board also charged that the letter would "tend to foment controversy, conflict and dissension among them and jeopardize the welfare of the schools of this District." (R. 12, Abst. 9, 10).

Under Illinois Law Mr. Pickering was entitled to a hearing before the Board and he requested it. At the hearing Mr. Louis Bertani acted both as prosecutor and as legal advisor to the Board (T. 5, Abst. 39) Testimony was heard and the Board members concluded that the charges they had formulated were, in fact, true. They also concluded that the charges were not "remediable"—a statutory requirement if Mr. Pickering was to be dis-

charged. (Ill. Rev. Stat. 1963, chap. 122, par. 24-12). The record shows that no evidence was offered or received (1) that the charges were not remediable, (2) that any effort was made to seek a retraction or other remedy, or (3) that the letter tended "to foment controversy, conflict and dissension . . . and jeopardize the welfare of the schools of this District."

The Board was the first and last tribunal to hold a fact-finding hearing in the Pickering case. The Circuit Court reviewed the record before the Board under the Illinois Administrative Procedure Act, (Ill. Rev. Stat. 1963, chap. 110, par. 264), and found that the Board's decision was not "manifestly against the weight of the evidence." (R. 68, Abst. 34). The Illinois Supreme Court reviewed the Circuit Court decision and concluded, in a five-two decision, that "the decision to dismiss the plaintiff was not against the manifest weight of the evidence." *Pickering* v. *Board of Education of Township High School Dist. No. 205,* 36 Ill. 2d 568, 225 N.E.2d 1, 7 (1967). Without setting standards to govern future cases, a majority of the Illinois Supreme Court found that Mr. Pickering's letter was sufficiently false and misleading to justify his discharge. Justice Schaefer dissented in an extensive opinion which was joined by Mr. Chief Justice Solfisburg. The dissenting opinion analyzed each statement in the letter, compared each statement with the record, and concluded that "the letter is substantially accurate." Marvin Pickering has brought the case to this Court.

ARGUMENT

I.

THE SCHOOL BOARD VIOLATED MARVIN PICKERING'S CONSTITUTIONAL RIGHTS BY DISMISSING HIM UNDER STANDARDS WHICH ARE VOID FOR VAGUENESS, AND BY DISMISSING HIM FOR EXERCISING THE FREEDOM OF SPEECH GUARANTEED ALL CITIZENS.

This Court will find Marvin Pickering's statement was substantially true. Any inaccuracies it contained were the result of reasonable and innocent mistakes. And on some questions Mr. Pickering's statement was more accurate than public statements by the School Board and the Superintendent. These conclusions are unmistakable from a review of Mr. Pickering's brief and of Justice Schaefer's dissenting opinion in the Illinois Supreme Court.

But if the Court has any doubt it must make its own review of the facts or remand the case for an independent review. It cannot rely upon the facts as found by the School Board since the Board was interested in vindicating itself, not affording a fair hearing. By occupying the inconsistent roles of complaining witness, prosecutor, judge and jury, it denied Mr. Pickering a hearing that complied with due process. (See Part II, *infra*). And the review of its action in the Circuit Court was of no value as a fact-finding proceeding since the Board's findings were deemed *prima facie* true and correct, (Ill. Rev. Stat. 1963, chap. 110, par. 274) and review was limited to the question of whether the Board's decision "is without substantial foundation in the record or is manifestly

against the weight of the evidence." (R. 68, Abst. 34). The majority opinion in the Illinois Supreme Court limited its review to the same questions. (36 Ill. 2d 578, 225 N.E. 2d at 6-7). This Court has recognized that when a Constitutional right is at stake it will make an independent review of the facts of a case. See cases cited in *Jacobellis* v. *Ohio*, 378 U.S. 184, 189 (1964).

a. The Standard Applied Was Unconstitutionally Vague.

As recently as *Keyishian* v. *Board of Regents of the University of the State of New York*, 385 U.S. 589, 603-04 (1967), this Court reiterated the substantial public interest in assuring teachers the right to freedom of speech. In *Keyishian* the Court held the New York "Feinberg" Law unconstitutional because the law, which prohibited the employment of "subversive" teachers, was so vague as to "chill" the exercise of vital First Amendment rights. "We emphasize once again that '[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms, *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 438; [f]or standards of permissible statutory vagueness are strict in the area of free expression. . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. *Id.* at 432-433. . . . When one must guess what conduct or utterance may lose him his position, one necessarily will 'steer far wider of the unlawful zone. . . .' *Speiser* v. *Randall*, 357 U.S. 513, 526. For '[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions.' *N.A.A.C.P.* v. *Button*, *supra*, at 433. The danger of that chilling effect upon the exercise of vital First Amendment

rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed. See *Stromberg* v. *California,* 283 U.S. 359, 369; *Cramp* v. *Board of Public Instruction,* 368 U.S. 278; *Baggett* v. *Bullitt,* [377 U.S. 360]."

Here, in full, are the "standards" used in the present case. These standards now govern the freedom of speech of Illinois teachers:

(1) The statute which the Board relied upon authorized it to dismiss a teacher "whenever, in its opinion, the interest of the schools require it. . . ." (Ill. Rev. Stat. 1963, chap. 122, par. 10-22.4)

(2) The majority opinion in the Illinois Supreme Court interpreted "the interest of the schools" to mean the Board can discharge a teacher when (a) he "publishes misleading statements which are reasonably believed to be detrimental to the schools" or (b) his "conduct is detrimental to the efficient operation and administration of the schools," or (c) "a teacher . . . displays disrespect toward the Board of Education, incites misunderstanding and distrust of its policies, and makes unsupported accusations against the officials. . . ." (36 Ill. 2d at 577-78, 225 N.E. 2d at 6).

Such standards lack the "narrow specificity" which this Court requires when the government regulates First Amendment rights. A teacher must wonder whether keeping a child after the end of a class period or assigning extra homework "is detrimental to the efficient operation and administration of the Schools," or whether stating that the school needs more laboratories or athletic facilities "displays disrespect toward the Board of Education." A teacher will also note that the standards do not excuse innocent or even accidental misstatements.

The danger of speaking out is compounded when one compares the standards used in the present case with the evidence actually introduced. For the record contains no evidence of any "detrimental" effect upon the operation of the schools, and Mr. Pickering's statement was both supported by examples and substantially true.

b. Teachers are Entitled To The Same Freedom of Expression Enjoyed by Other Citizens.

Whether or not the standards employed in this case were too vague, they were unconstitutional. In the Illinois Supreme Court and in this Court Marvin Pickering has argued that a teacher is entitled to the same freedom of speech guaranteed other citizens by *New York Time Co.* v. *Sullivan,* 376 U.S. 254 (1964), and *Garrison* v. *Louisiana,* 379 U.S. 64 (1964). Both cases held that the Constitution prohibits civil or criminal sanctions upon individuals who criticize the official conduct of public officials, unless the criticism is made with actual malice or reckless disregard of the truth. The Illinois Supreme Court rejected that standard in the present case because "the plaintiff here is not a mere member of the public. . . . By choosing to teach in the public schools, plaintiff undertook to refrain from conduct which in the absence of such position he would have an undoubted right to engage in." (36 Ill. 2d at 577, 225 N.E. 2d at 6).

This Court's holding in the *Keyishian* case, *supra;* is exactly opposite. There the Court expressly rejected the "premise . . . that public employment, including academic employment, may be conditioned upon the surrender of constitutional rights which could not be abridged by direct government action." (385 U.S. at 605-06). This error alone requires reversal, for no effort was made—

or could successfully be made—to show that Mr. Pickering acted with malice or reckless disregard of the truth.

The Illinois Supreme Court decision is also inconsistent with state court decisions which recognize the right of public employees to exercise their freedom of speech so long as the speech does not actually impair governmental functions. *See, e.g., Board of Trustees* v. *Owens,* 206 Cal. App.2d 147, 162-63, 23 Cal. Rptr. 710 (1962); *Brickman* v. *New Orleans Aviation Board,* 236 La. 143, 166-67, 107 So.2d 422 (1958); *Adams* v. *State,* 69 So.2d 309 (Fla. 1954); *City of St. Petersburg* v. *Pfeiffer,* 52 So.2d 796 (Fla. 1951). This Court is not called upon to adopt or reject those cases, however, for under any theory Mr. Pickering could not be discharged. The record in the present case contains no evidence that Mr. Pickering's letter caused disruption of any educational services. And any possibility of disruption due to contact and friction between Mr. Pickering and the Board would be very unlikely since Mr. Pickering spent all his professional time in classroom teaching.

It would be anomalous and ironic if the Constitution did not require a school board to tolerate criticism from a teacher. Section 8(c) of the National Labor Relations Act, 61 Stat. 136, 142 (1947), 29 U.S.C. §158(c) (1964 ed.), recognizes that private employers bear the same duty to tolerate the free exchange of critcism as *New York Times Co.* v. *Sullivan* requires public officials to bear. The NLRA, like the *New York Times* case, prohibits discharging an employee for statements made about his employer, unless made with actual malice. See *Linn* v. *United Plant Guard Workers,* 383 U. S. 53, 60-61 (1966). Just as the NLRA protects the employee in the private sector from discharge by his private employer, so the rationale of *New York*

Times protects the employee like Mr. Pickering from discharge by his criticized employer, the public official.

The irony of a suggestion that the Constitution requires less of public officials is heightened by the fact that a teacher occupies an especially sensitive position from which he can contribute to the public's knowledge of the schools and their needs. In *Adler* v. *Board of Education,* 342 U.S. 485, 493 (1952), overruled by the *Keyishian* case and others, this Court predicated the restrictions it allowed the states to impose upon teachers' freedoms upon the basis that "a teacher works in a sensitive area in a school room. There he shapes the attitudes of young minds toward the society in which they live. In this the state has a vital concern." Although we are well rid of the restrictions, the point remains valid in the present context. For a teacher like Mr. Pickering to withhold his views on the welfare of the schools and their pupils would deprive the public of valuable and unique perspectives. But if the Illinois Supreme Court decision stands, teachers will be seriously discouraged from speaking out, and our school systems and their pupils will be the real losers.

II.

DUE PROCESS PROHIBITS THE SCHOOL BOARD FROM ACTING AS COMPLAINANT, PROSECUTOR, JUDGE AND JURY.

Marvin Pickering was accused, prosecuted, judged, convicted and discharged by the School Board he had offended. Although the majority opinion in the Illinois Supreme Court did not discuss the propriety of that procedure, Justice Schaefer in his dissent concluded that "A legislative system which, as in this case, casts them [School Board members] in the role of aggrieved victims who formulate, prosecute and punish charges based on

their grievances is not, in my opinion, compatible with present standards of due process" (36 Ill. 2d at 585, 225 N.E. 2d at 10). The great danger that School Board members will act unfairly when they have an interest in the case they judge is borne out in the present case by the following examples.

(1) Illinois statute (Ill. Rev. Stat. 1963, chap. 122, par. 24-12) required the School Board to hold a hearing to determine whether there was proper cause to fire Mr. Pickering. At the hearing Mr. Louis Bertani acted both as legal advisor to the Board and as prosecutor of the charges against Mr. Pickering (T. 5, Abst. 39). The record shows fifteen disputes between Mr. Bertani and Mr. Ligtenberg, Mr. Pickering's attorney, over the admissibility of evidence or the disposition of motions. In each case the Board ruled for Mr. Bertani and against Mr. Pickering's attorney (T. 6-7, 257-58, 289, 295, 302, 313, 357-58, 361-67, 464-65, 476, 565-66, 595; Abst. 40, 75, 79, 80, 81, 84, 88, 89, 104, 107, 122, 126). Those rulings, for example, prevented Mr. Ligtenberg from showing the truth of Mr. Pickering's statements that the Board had sodded the football field with borrowed funds (T. 357-59, Abst. 88) and might not be able to pay teachers' salaries (T. 295, Abst. 80).

(2) The Board's charges against Mr. Pickering included disrupting "the discipline of the teachers and morale and harmony among Teachers, Administrators and Board" (R. 12, Abst. 10). Although the Board found him guilty as it had charged (R. 32-33, Abst. 27), and found the charges to be "true, fully proven and supported by the evidence," no proof of any disruptive effect was introduced at the hearing, and there is none in the record.

(3) To justify discharging Mr. Pickering the Board was required by Illinois statute (Ill. Rev. Stat. 1963, chap.

122, par. 24-12) to find the charges against him were not "remediable." Again, no evidence of the remediable or irremediable character of the charges was introduced at the hearing or appears elsewhere in the record.

No reason other than prejudgment can account for the uniform and erroneous rulings against Mr. Ligtenberg's efforts to develop evidence on clearly relevant issues. And the Board's failure to receive any evidence of record on the disruptive effect of Mr. Pickering's letter or on the remediable character of the charges means either that the Board had made up its mind on such questions before the hearing, or that it relied upon secret and uncontested testimony.

This Court has recognized that the sort of prejudice which occurred in the present case results whenever a tribunal judges a person against whom it has an adverse interest. The Court has held that such proceedings violate due process.

In *Tumey* v. *Ohio,* 273 U.S. 510 (1927), for example, the Court held that due process was violated when a Mayor tried a defendant in a case in which the Mayor had an interest directly adverse to the defendant. The Mayor received compensation for his expenses only out of fines collected from the defendant, and the Mayor's village also received substantial revenues from the fines. The Court held that "a situation in which an official perforce occupies two practically and serious inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him" (273 U.S. at 534).

In subsequent cases the Court has stated that whether the judge is adversely interested depends upon the "circumstances and relationships" of the judge and defendant.

In *In re Murchison*, 349 U.S. 133 (1955), the Court held that due process was violated by a Michigan law which permitted a single judge to act as a grand jury and then try the man he had indicted. The Court stated that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered" (349 U.S. at 136).

This Court has frequently held that the requirements of procedural due process apply to quasi-judicial administrative proceedings. In *Morgan* v. *United States*, 304 U.S. 1 (1938), the Court held that the "rudimentary requirements of fair play" were violated when the Secretary of Agriculture set certain rates without giving the affected parties any notice of the Government's positions or an opportunity to contest them. The Court held that "in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand a 'fair and open hearing'—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard' . . . And in equipping the Secretary of Agriculture with extraordinary powers under the Packers and Stockyards Act, the Congress explicitly recognized and emphasized this requirement by making his action depend upon a *'full hearing'*" (304 U.S. at 14-15). *Accord, Railroad Comm. of California* v. *Pacific Gas and Electric Company*, 302 U.S. 388, 393 (1938); *Ohio Bell Telephone Company* v. *Public Utilities Comm.*, 301 U.S. 292, 304-05 (1937).

These cases make clear that the proceedings in the present case violate due process. Here the School Board's interest was more adverse than that of the judge who might have hoped to collect part of the small fine levied in the *Tumey* case. The Board members were outraged because, as they stated in their charges, Mr. Pickering had "questioned and impugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education" (R. 12, Abst. 10).

The *Morgan* case required that a party to a quasi-judicial administrative proceeding be advised of the charges against him and be given an opportunity to defend himself. Yet both of those requirements would be hollow formalities unless the hearing *Morgan* requires occurs before a disinterested judge. In the present case the charges they prepared proved that the Board members were not disinterested. And here the Board not only filled the joint role of complainant and judge condemned in *Murchison*, but also the joint role of prosecutor and judge.

The hearing required by statute in the present case was "quasi-judicial." In an earlier opinion in the *Morgan* case this Court had defined the term as "the taking and weighing of evidence, determinations of fact based upon the consideration of the evidence, and the making of an order supported by such findings, . . .", *Morgan* v. *United States*, 298 U.S. 468, 480 (1936). The hearing required by statute in this case meets all those requirements. The Board must serve written notice of the charges against the teacher, and the teacher may request a bill of particulars. The teacher is entitled to be represented by counsel, to cross-examine witnesses, to offer evidence and to present defenses to the charges. Witnesses may be subpoenaed, testimony must be taken under oath, and a stenographic

transcript of testimony must be kept (Ill. Rev. Stat. 1963, chap. 122, par. 24-12). Moreover, the Illinois Courts have held that "the hearing afforded by the statute is supposed to be a fair and impartial hearing. The administrative agency does not represent one party against the other. . . ." *Lusk* v. *Community Consolidated School Dist. No. 95*, 20 Ill. App. 2d 252, 258, 155 N.E. 2d 650 (2nd Dist. 1959). *Morgan* and other cases in accord with it require that such a quasi-judicial proceeding meet the requirements of procedural due process.

The due process which this Court has required in administrative proceedings is now guaranteed parties appearing before federal agencies by the Administrative Procedure Act (60 Stat. 237, 240 (1946), 5 U.S.C.A. sec. 554(d)). Section 5(c) of the Act provides that "an employee or agent engaged in the performance of investigative or prosecuting functions for any agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision or agency review. . . ." And the hearing officer may not be subject to the control of anyone who investigated or prosecuted the case.

A number of State courts have recognized that the constitutional requirement of an impartial tribunal in quasi-judicial proceedings applies to hearings before school boards. In *Mackler* v. *Board of Education of the City of Camden*, 16 N.J. 362, 108 A. 2d 854, 856-57 (1954), the Court stated: "The making of a complaint does not disqualify a board member where its making is a formality of office and no personal interest is shown, . . . , but where private interest at variance with impartial performance is shown there is disqualification . . . , and likewise malice or ill-will cause disqualification. . . . The danger that must be guarded against is a concentration of inquisitional,

prosecution and judicial powers, to be the end that there may be impartiality of judgment."

In *Osborne* v. *Bullitt County Board of Education*, ... Ky. ....., 415 S.W. 2d 607, 610 (1967) the Court held that a teacher discharged for insubordination had been denied procedural due process. "We are deeply concerned with the procedure which requires a teacher to submit to a trial at the hands of the school board, the members of which wear three hats, the hat of the employer, the hat of the prosecutor, and the hat of the trier." The Court overruled an earlier case which limited judicial review to an examination of the record for evidence of arbitrariness by the Board. Instead, it required a trial *de novo* of the entire case in a Kentucky trial court.

In *Miller* v. *Board of Education of District No. 132*, 51 Ill. App. 2d 20, 21, 200 N.E. 2d 838 (1st Dist. 1964), an Illinois intermediate appellate court held that a teacher discharged after a hearing by the School Board "was prevented from having a fair trial by the multiple capacities in which the School Board and its attorney were functioning." As in the present case, the Board's attorney was both prosecutor and legal adviser. The Illinois Supreme Court did not discuss the *Miller* case in its decision in *Pickering*.

Some State cases permit School Board members to exercise mixed functions in deciding whether to discharge teacher. In *Moran* v. *School Committee of Littleton*, 317 Mass. 591, 59 N.E. 2d 279, 280-81 (1945), the Court sustained a proceeding in which two members of a three member school board acted both as witnesses against a school principal and as judges. The only reason given for allowing the members of the Board to participate in the decision was that: "A member of an administrative

board who is biased or prejudiced against one on trial before the board is not required to withdraw from the hearing if no other board can hear and determine the matter, especially if his withdrawal would deprive the board of the number of members required to take a valid affirmative vote. This rule is based on necessity and is designed to enable the board to exercise its power where it might otherwise be barred from doing so on account of the bias, interest or prejudice of its members."

Professor Kenneth Davis has written that "perhaps the aspect of the law about bias that is most in need of critical reexamination is the application of the rule of necessity." 2 Davis, *Administrative Law,* sec. 12.06, at 169 (1958). And "the easy and seemingly automatic application of the rule of necessity is more dangerous than is recognized in typical judicial opinions, for grave injustice may result from allowing disqualified officers to adjudicate cases." *Id.*, sec. 12.04, at 164. Justice Schaefer in his dissenting opinion in the present case thought a procedure which cast the Board members in the role of complaining witness, prosecutor, judge and jury was not necessary, "for charges of this sort could readily be heard and determined by the County Board of School Trustees, the County Superintendent of Schools, or the Superintendent of Public Instruction" (36 Ill. 2d at 585, 225 N.E. 2d at 10). Thus, the only rationale which can be offered to support the procedure used here is inconsistent with the protections which this Court has afforded parties in administrative and judicial hearings, and has been roundly condemned.

When the Board accused, prosecuted, judged, convicted and discharged Marvin Pickering, it violated due process. The judgment should be reversed.

CONCLUSION

After five years of teaching Marvin Pickering was fired because he criticized the School Board. The standard under which he was discharged would, if sustained, allow a school board unconstitutionally broad discretion to discharge teachers, and would have a chilling effect upon teachers' freedom of speech. Teachers would have far less freedom of speech than other citizens. Such a result would be contrary to the whole trend of Supreme Court decisions guaranteeing the freedom of expression of this important group of citizens.

The procedure followed in this case, whereby the School Board acted in inconsistent capacities and with interests adverse to Mr. Pickering's, violated well-established principles of due process. If such procedures are allowed, they, too, will have a chilling effect upon teachers' freedom of expression.

For these reasons the decision of the Board of Education should be reversed, and Marvin Pickering should be ordered reinstated.

Respectfully submitted,

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December, 1967

SUPREME COURT, U. S.

JAN 22 1968

JOHN F. DAVIS, CLERK

No. 510

In the

Supreme Court of the United States

OCTOBER TERM, 1967.

MARVIN L. PICKERING,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Defendant-Appellee.

On Petition for Writ of Certiorari to the Supreme Court of Illinois.

BRIEF OF DEFENDANT-APPELLEE

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BRIEF OF DEFENDANT-APPELLEE

STATEMENT AS TO JURISDICTION OF COURT

The defendant school board admits that the issue of freedom of speech under the First Amendment and the Fourteenth Amendment were properly raised and preserved in the lower court, but states the fact to be that the plaintiff teacher did not raise the question of the constitutionality of Chapter 122, Section 24-12, which provides for a hearing by the same Board which dismissed the teacher. App. I, pages 6, 7, and 8, Complaint for Administrative Review, and App. I, pages 28 and 29, School

Board's Motion to make Paragraph 17-L of the Complaint for Review more specific, and plaintiff's specification thereto, App. I, page 32, and also see teacher's brief and argument in the Illinois Supreme Court; nor was the vagueness of Chapter 122, Section 10-22.4 raised in the initial reviewing court.

The first time the constitutionality of the Board's power to act as a tribunal was raised in the dissent of Justice Shaeffer, App. I, page 152. The issue of constitutional propriety of Louis Bertani to act as prosecutor as suggested in the brief of Amicus Curiae, pages 3 and 11, was never raised in this proceedings until suggested by the Amicus Curiae. The Complaint for Administrative Review and the briefs of the teacher in the Illinois Supreme Court were completely silent as to this point. The School Board herein states the fact to be that Louis Bertani was a specially employed attorney for the Board to prosecute on behalf of the Board and that John Verklan was the regularly employed School Board attorney, and acted as the Board's advisor in the original hearing before the Board. App. I, pages 86 and 87. This was done to avoid the rulings in *Miller* v. *Board of Education of District #132,* 51 Ill. App. 2d, 20, 41; 200 N.E. 2d, 383, First District 1964. The Complaint for Administrative Review made no request for the Appeal Court to rule upon the admissions and exclusions of evidence offered. It is therefore respectfully requested that this Court discard those portions of the teacher's brief and the brief of the Amicus Curiae as to those issues not raised in the Courts below. *Keyishian* v. *Board of Regents,* 87 S. Ct., page 679 (1967); *Adler* v. *Board of Education,* 342 U.S. 496, and 372 S. Ct., 386.

QUESTIONS PRESENTED FOR REVIEW

1. Can a public school teacher be dismissed by the School Board when the teacher publishes a letter in a newspaper which contains false and misleading statements criticizing the School Administrator and the School Board?

2. Is that part of Chapter 122, Section 10-22.4, Ill. Rev. Stats. (1963) which provides that a Board of Education may dismiss a teacher whenever "in its opinion the best interests of schools require it", unconstitutional as being vague and indefinite when applied to First Amendment rights?

3. Is Chapter 122, Section 24-12, Illinois Revised Statutes (1963) unconstitutional in that it fails to accord a fair hearing to a teacher under the facts in this case?

STATEMENT OF FACTS

The School Board adopts the statement of facts as set forth in the majority opinion of the Illinois Supreme Court, including its findings and its statements regarding the applicable law. App. I, pages 134 through 144 inclusive.

The letter written by the teacher was published on September 24, 1964, in the Lockport Herald, a weekly newspaper with an average circulation of 2,943. App. I, page 43. The letter was published shortly after the beginning of the school year and was in no way related to a labor dispute nor pending election of board members. (Board members are elected annually in the month of April. Chapter 122, Section 9-5, Illinois Revised Statutes, 1963.)

SUMMARY OF SCHOOL BOARD S ARGUMENTS

1. That there was sufficient cause for plaintiff's dismissal because the statements published by the teacher were false or made with utter disregard of the truth, to constitute falsehoods; that the false or misleading statements aimed at the Board of Education (elected officials) and the School Administrator (appointed official) were not constitutionally privileged, and that there was substantial evidence in the record to support the School Board's finding that they were false or misleading and detrimental to the interests of education and that the false statements were not remediable.

2. That the education of the youth of the nation is of great public concern and that acceptance of employment in the public school system creates an obligation on the part of the teacher to abide by reasonable legislation, regulation and rule which have been imposed and decreed necessary by the state to achieve its goals in education; that the teacher has an obligation of loyalty to support the generally accepted goals of education established by the Board of Education and the State; that the importance of education must yield to the unfettered, absolute and unrestricted constitutional rights that the plaintiff insists are his.

3. That the belated issue of fair hearing allegedly denied by Chapter 122, Section 24-12, Ill. Rev. Stats. 1963 should not be reviewed by this Court since it was not raised in the lower Courts; that the Illinois administrative procedure is very similar to the Federal procedure for dismissal of Federal employees with review provided for in the Courts; that if the Court reverses on this point, that the reversal be coupled with a remanding order for trial de novo in the Circuit Court of Will County. Illinois.

PREFACE

I. BRIEF ANALYSIS OF ILLINOIS SCHOOL MANAGEMENT AND FINANCE LAW.

In order to assist this Court in arriving at a decision on the important issues presented in this Appeal, we believe it is necessary to set forth and analyze the State of Illinois' scheme of school operation and management.

The Legislature in its judgment has determined that schools are best managed and operated at the local level and therefore provided for the establishment of school districts at county or lesser territorial areas. Article 9, Chapter 122, Ill. Rev. Stats. 1963.

The Legislature recognizing disputes could arise between different districts in matters of boundaries, annexations and de-annexations, created the office of County Superintendent of Schools and the County Board of School Trustees to solve these problems. Chapter 122, Articles 3 and 4, Ill. Rev. Stats. 1963.

The Legislature, recognizing that problems were arising that were state-wide in scope, created the office of State Superintendent of Public Instruction and School Problems Commission, and in 1961 that Commission promulgated the present Illinois School Code, which was adopted by the General Assembly and became law on March 18, 1961. While it is true that the present School Code retained many of the provisions of the former legislative acts, considerable time and study was made by that Commission to codify the law relating to schools. (See introduction to School Code 1961, page VII, Vol. 1, Ch. 122, Smith-Hurd Annotated Statutes.)

Except for certain types of state aid, high school districts are financed by local taxes levied on real estate and personal property located within the high school district. In order to control school finances, the General Assembly has established three basic funds; namely, the Educational Fund, Building Fund and Transportation Fund, providing by mandatory legislation amounts which high schools (any school district) could raise for those purposes. The said funds can be used only for the purposes intended and cannot be interchanged and cannot be commingled. Teachers' salaries are paid from the Educational Fund.

The Illinois Legislature, recognizing that school districts vary in population make-up as to social, economic, ethnic and religious background, provided that the maximum limits of taxation could be increased beyond the statutory limits imposed, by referenda conducted by the local school authorities. This method of school financing has created a great disparity in teachers' salaries, money available for educational purposes, school curriculum and school construction, throughout the State. Some school districts have little or no difficulty passing their proposed referenda, while others, like the defendant school district, have considerable difficulty as shown by the record in this litigation. In Illinois, school construction can only be financed by the issuance of building bonds; substantially, in conformance with a previously adopted plan by the School Board and approved by the legal voters in a referendum. It is illegal, in Illinois, to accumulate tax money out of any of the basic funds mentioned. Any savings effectuated by the Board must be passed on to the taxpayers by reducing its subsequent levy.

In its desire to obtain the best type of management for its schools, the Illinois General Assembly requires its board members to seek office on a non-partisan basis at an

election conducted solely for the purpose of electing school board members; that is to say, a school board election cannot occur on the day of a partisan election; and to further the purpose of obtaining dedicated persons to serve on its boards, board members are required to serve without compensation. The legal requirement for a person to be qualified to sit as a school board member is that he must be a legal resident of the district upwards of the age of 21 years.

School Board members are charged with the responsibility of maintaining proper records, *providing revenue to operate the schools,* adopt reasonable rules and regulations governing the operation of the district, inspect school buildings and facilities, hire and fix salaries of employees within certain minimum limits imposed by the legislature, (minimum salaries of teachers, see Ch. 122, Sec. 24-8, Ill. Rev. Stats. 1963) provide adequate and safe school buildings and facilities, provide for the safety of pupils, provide for the transportation of students, provide for the maintenance of school properties, provide for the discipline of students, conduct hearings for the suspension or dismissal of students and conduct hearings for the dismissal of teachers. The foregoing are some of the more important duties of the school board that can be found in more detail in Article 10, Chapter 122, Ill. Rev. Stats. 1963. The result of the duties thus imposed is that the Board of Education is constantly involved in matters arising out of the relationship between teacher and student, teacher and teacher, teacher with parent, teacher with administration, teacher with employing school board, teacher with teacher from other school districts, teacher with non-teacher employees, all of which will bring the quasi-judicial function of the School Board into opera-

tion. In addition, the Illinois School Board is faced with contract negotiations with teachers within the district, negotiations with other districts in limited areas of special education, scholastic and athletic competitions.

The paramount and most distasteful responsibility of the Illinois School Board is the calling upon the taxpayers of the district to vote on to themselves a raise in taxes, a most difficult task for a school district inhabited by a populace, a considerable part of which will receive no direct benefit from such an increase. The competition for the tax dollar among the multitude of taxing bodies (county, township, cities, drainage districts, sanitation districts, grade school districts, junior colleges, etc.) adds to the magnitude of defendant's difficulties to finance an adequate common school education for its high school students. The preparation necessary to convince the voters to pass a rate increase is evidenced by the documents cointained in the record. App. II, pages 10 through 15 inclusive; App. II, pages 17 through 39 inclusive.

In 1941 Illinois adopted its teacher tenure law. Chapter 122, Sec. 10-22.4 Ill. Rev. Stats. Its object is to improve the school system by assuring teachers of experience and ability, a continuous service based upon merit, and to prevent dismissals for reasons that are political, partisan or capricious. *Donohoo* v. *Board of Education,* 413 Ill. 422; 109 N.E. 2d, 787 (1952) at Page 789. As a companion measure, the Illinois legislature adopted Chapter 122, Section 10-22.4 which provides that the Board of Education can dismiss a teacher for incompetency, cruelty, negligence and to dismiss any teacher whenever, in its opinion, the interests of the schools require it. Chapter 122, Sec. 24-16, Ill. Rev. Stats. establishes the procedural rules for the hearing.

The decision of the Board is subject to administrative review as provided for in Chapter 110, Paragraph 264; and that decision will not be set aside unless it is without substantial support in the record or it is arbitrary, capricious or is manifestly against the weight of evidence. *Keyes* v. *Board of Education*, 20 Ill. App. 2d, 504; 156 N.E. 2d, 763 (1959). It has been held that where a statute is silent as to what constitutes cause and what is or is not remediable, the School Board has the power to determine such questions in the first instance and its decision in that regard is considered prima facie correct. *Jepsen* v. *Board of Education*, 19 Ill. App. 2d, 204; 153 N.E. 2d, 417 (1958).

The Illinois Practice and Procedures under its Administrative Review Act is not too materially different from the Federal Practice, particularly with regard to findings of the agency and the duty of the courts on review. *Batcholor* v. *U.S.* 1965, 169 Ct. Cl. 180; Certiorari Denied 86 S. Ct. 147; 382 U.S., 870; *Houston* v. *U.S.* 1962, 297 F. 2d, 838; Certiorari Denied, 83 S. Ct. 204; 371 U.S., 906.

ARGUMENT

I.

THERE WAS SUFFICIENT CAUSE FOR PLAINTIFF'S DISMISSAL UNDER THE ILLINOIS SCHOOL CODE.

A. THE PUBLISHED STATEMENTS OF THE TEACHER WERE FALSE OR RECKLESSLY MADE.

The majority of the Illinois Supreme Court, reviewing the evidence adduced at the trial, concluded that the statements published by the teacher were untrue and misleading and were detrimental to the best interests of education. App. I, pages 142 and 143. Accordingly, the Board of Education concurs with that Court and suggests the concurrence of this Court.

The accusations of the teacher were asserted as positive averments of fact and by twisted and tortured logic, hearsay and unbelievably strained interpretation, a change of plans by the School Board became a breach of promise (App. I, pages 138 and 139); an expensive non-regulation track fell out of the sky (App. I, pages 48 and 138; App. I, page 102); a speech by the school administrator to the teachers to support the referendum was a threat and insult to the voters (content of the teacher's letter). Letters written by a group of five or six teachers appointed by the executive board of the union in support of the rate increase (App. II, page 13) became a sinister conspiracy to bilk the taxpayers; a school policy requiring submission of the printed material to the school coordinator in triplicate prior to publication, for purposes of accuracy (App. I, pages 105 and 106) constituted censorship and totalitarianism for the teachers and students; a $40,000.00 error

(App. I, page 142) in estimating transportation costs attributable to the athletic department is viewed as mere inflation, teacher's brief, page 64.

A capital expenditure, $111,558.00 for a tennis court and football field is stated to be a yearly expense (App. I, pages 108, 109, and 141); architectually designed classrooms without doors, a plant room without sunlight and a first-aid room without water to save money, became a fraud to the taxpayers (App. I, pages 49 and 50); and then with a puerile conclusion, the teacher is no longer writing his letter as a teacher, but as a voter and taxpayer, taking a final swipe at the administrator, implying that he operates a prison.

The Illinois Supreme Court went on to say, "Other statements and charges made in plaintiff's letter could reasonably have been found to be untrue and misleading." (App. I, page 142) The Court found from the record that the teacher never made a formal or informal protest or report to any of his superiors about the subject matter of his accusations and charges (App. I, page 142) although, the teacher attended many board meetings prior to writing and publishing his letter (App. I, page 100).

Justice Shaefer in his opinion points out the inaccurate statements of the teacher (App. I, page 151), and goes on to say that the letter need not be a model of literary style, good taste and sound judgment. However, in *Krennrich* v. *U. S.*, 340 Fed. 2d 653 at page 654, a dismissed Federal employee contended that the Civil Service Commission could not dismiss her without first proving that the statements she published in an anonymous letter were in fact false. The letter in question was sent to a superior and to the wife of a fellow employee. In sustaining the dismissal of the public employee the Court held that the truth or falsity of the letter was not in issue, but the

efficiency of the Federal service was, Certiorari Denied 86 S. Ct. 147; 382 U.S. 870.

The false and inaccurate statements made by the teacher cannot be justified by pointing to one or two inaccurate statements made by the Board or the administrator out of the maze of material prepared and distributed in support of the referendum. App. II contains said materials.

The Board of Education contends that the teacher by virtue of his public employment has a duty of loyalty to support his superiors in attaining the generally accepted goals of education and that, if he must speak out publicly, he should do so factually and accurately, commensurate with his education and experience.

B. THAT THE STATEMENTS WERE NOT REMEDIABLE.

Plaintiff made his unwarranted false charges to the public at a time when the district was having severe growing pains. It had just built two new high schools and was already operating one. It early recognized the need for a higher tax rate for educational and transportation purposes because of this building program and put the matter to the public twice. The propositions for the tax rate increases were defeated twice. It is common knowledge that in Illinois, many school districts were and are presenting such proposals to the voters and with little success. The public does not agree easily to having its taxes increased. To say that the best interests of the schools and of the children of the district would not suffer by dissemination of such false accusations and statements to the public by a teacher of the district during these critical and crucial times is contrary to common sense. Plaintiff's accusations were not conducive to the proper and efficient education of the children of said district.

In *Jepson* v. *Board of Education,* 19 Ill. App. 2d, 204; 153 N.E. 2d, 417 (1958), the teacher dismissed stated orally to other teachers in the employing school and to coaches in athletically competing schools that one of the student football players was ineligible. In sustaining the Board of Education, the Court found such oral statements to be without remedy.

The continued employment of Marvin Pickering in District 205 would give substance and credence to the false charges made in his publication.

C. FALSE STATEMENTS KNOWINGLY OR RECKLESSLY MADE ARE NOT CONSTITUTIONALLY PRIVILEGED WHEN THE STATEMENTS PUBLISHED CAN BE REASONABLY SAID TO BE DETRIMENTAL TO THE BEST INTERESTS OF SCHOOLS.

It has been pointed out earlier in this brief that school boards are composed of elected officials, but only in the narrowest definition of the word elected. Under the Illinois scheme, Board members receive no salary, are non-partisan, and are very limited in financial authority. Raising sufficient revenue to operate its school system is the most vital of its statutory duties, and the most consuming of its energies. The Board of District 205 has determined that an athletic program and competition is desirable and worthwhile. The advantages for the student participants in such a program need not be discussed, except to say that vibrant and youthful energies are diverted to such acceptable virtues as reliability, citizenship, obedience, discipline, sportsmanship, loyalty and cooperation. Raising tax monies for the athletic program was one of the policies of the board for the benefit of the students in the district.

A responsible, intelligent, and factual debate or public statement opposing the school board's expenditure of tax monies for athletics on the theory that the money spent is not justified and would be more beneficial to the students if applied to the more academic offerings of the school, certainly would be constitutionally privileged—but a reckless, childish, inaccurate, irresponsible, pointless and incoherent publication by a teacher in opposition of legitimate Board policy certainly cannot be privileged. The school policy with respect to band, choir, dramatics, debate competition, and maybe its science programs, could be subjected to the same type of publication. The Board of Education has the responsibility of budgeting, pro-rating and determining the order of the priority of the available tax monies. The Board and the Administrator ought to be entitled to the intelligent cooperation of the teachers in arriving at a decision as to how the money is best used.

It, therefore, must be concluded that all of the cases cited by the teacher relating to libel for money damages, criminal libel, obscenity, and loyalty oaths, are not applicable. The teacher quotes frequently and freely in the abstract from these cases without relating them to facts of the quoted cases or to the facts of the case at bar, all of which tends to confuse the real issue.

The Illinois Court concluded that principal cases relied upon by the teacher were not applicable, (App. I, page 142) and the Board solicits the concurrence of this Court.

In support of the Illinois decision, we quote *Houston* v. *U. S.*, 297 Fed. 2d 838 (1962), Certiorari Denied, 83 S. Ct. 204; 371 U.S. 906, at page 841:

> "But whether the facts in this case bring it within the privilege, as above defined, we do not need to decide. The action before the Commission was not

> one for slander or libel, but one to determine whether or not plaintiff's discharge promoted the efficiency of the service. The question is, was the Commission, in such a proceeding, justified in saying that the employee's inability to sustain the grave charges he had made against his superior justified his dismissal."

The majority of the Illinois Supreme Court, and the defendant Board of Education, can see no reason why the Federal standard cannot be applied to state public employees.

II.

CHAPTER 122, SECTION 10-22.4, ILLINOIS REVISED STATUTES (1963), WHICH PROVIDES THAT A BOARD OF EDUCATION MAY DISMISS A TEACHER WHENEVER IN ITS OPINION THE BEST INTERESTS OF SCHOOLS REQUIRE IT, IS NOT UNCONSTITUTIONAL AS BEING VAGUE AND INDEFINITE WHEN APPLIED TO FIRST AMENDMENT RIGHTS.

The teacher in his brief relies heavily on this Court's recent decision in *Keyishan* v. *Board of Regents,* 87 S. Ct., 675 (1967), in which this Court declared unconstitutional New York's Feinberg law, and several administrative rules and regulations, all aimed at the extraction of a loyalty oath from public employees in the State of New York's public school system. On the contrary, the defendant contends that this case supports the position of the School Board in the case at bar. The *Keyishian* case affirms the prior decision of this Court, which have held that public employment which may be denied altogether, may be subjected to any conditions regardless of how unreasonable, has been uniformly rejected. The Court, by this statement, affirms that the state may place reasonable restrictions and conditions on public employment. This Court in striking down the State of New York's attempt

to extract non-communistic loyalty oaths from its public school teachers by a maze of administrative regulation, ruled that the best interests of education and academic freedom are best served when teachers are not required to submit to a loyalty oath, which could be violated when the teacher delivered a lecture to his students on communism. The requirement of a loyalty oath does not bear any reasonable relationship to a person's efficiency, competency or ability to carry out his teaching responsibilities.

The attack on the Illinois statute must necessarily constitute an attack on fifty similar statutes, as the several states and Congress have couched their tenure statutes in what appears to be on first examination vague language. Congressional legislation provides that Federal employees can only be dismissed for "such cause as promotes the efficiency of the service". Title 5, U.S.C.A., Sec. 7501 (Competitive Service); Title 5, U.S.C.A., Sec. 7512 (Preference Eligibles). It has long been recognized that relationships which can give rise to many different factual situations must be regulated in general language. Millions of dollars of personal injury judgments are sustained on the Reasonable Man Doctrine of Negligence Law. Pecuniary conflicts of interests laws, malfeasance and nonfeasance laws and regulations of innumerable administrative agencies are couched in the broadest of language. To declare the Illinois statute in question unconstitutional in its application or otherwise, would only serve to confuse or make irreconcilable all of the other legal doctrines so firmly established in the judicial test of reasonableness.

In sustaining a dismissal of a First Assistant to the Assistant United States Attorney General in charge of Civil Division, the United States Court of Appeals for the District of Columbia held:

"Congress did not attempt a definition of 'cause', providing only that it must be one that would promote the efficiency of the service. Some latitude was thus left to those responsible for administering the Act. Faithfulness to its purpose to reward those who served in the armed services by granting a protective preference must be maintained. But the preference granted does not protect a veteran in a position when removal therefrom, viewed in the light of competing policies and all the circumstances, can reasonably be said to lead to increased efficiency in highly placed governmental operations." *Leanard* v. *Douglas,* 321 Fed. 2d (1963), 749, at page 752.

To conclude our argument on this issue we cite *Board of Education* v. *Swan,* 41 Cal. 2d 546; 261 P. 2d 261, Cert. denied, 347 U.S. 937, 98 L. Ed. 1087; 74 S. Ct. 627 (1954), on page 266 of Pacific Reports, 2nd Series:

The fact that the term "unprofessional conduct" is not defined by statute authorizing the dismissal of a teacher . . . does not render it void for uncertainty. As was said in the Goldsmith case . . . ". . . the calling (of a teacher) is so intimate, the duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that they are incapable of enumeration in any legislative enactment . . . the teacher is entrusted with the custody of his children and their preparation for useful life. His habits, his speech, his good name, his cleanliness, *the wisdom and propriety of his unofficial utterances,* his associations are all involved. His ability to inspire children and to govern them, his power as a teacher and the character for which he stands are matters of major concern in a teacher's selection and retention. How can all of these things be provided for and offenses against them be particularly specified in a single statute? It was further said, . . .: "No one has a natural or inherent right to teach a public school" and the Legislature "for reasons of public

policy" may make the right to teach in any particular school subject to broad discretion in the school authorities to dismiss for causes which come within very general designations."

III.

THE HEARING AFFORDED THE TEACHER DID NOT VIOLATE DUE PROCESS.

A. ISSUE NOT RAISED IN LOWER COURTS.

It is most interesting to note that in the complaint for administrative review the teacher raises constitutional matters in two separate paragraphs, 17-L and 17-M, App. I, page 7. The board filed a motion to strike or in the alternative make more specific paragraphs 17-L and 17-M of the complaint, App. I, page 29. The board's motion with regard to paragraph 17-M was denied, App. I, page 30; but the teacher was ordered to make paragraph 17-L more specific. App. I, page 30. Teacher's paragraph 17-L alleged:

> "The plaintiff was deprived of his property and personal rights without due process of law in violation of the Constitution of the United States of America and Section 2 of Article II of the Constitution of the State of Illinois, App. I, page 7.

The teacher's specification is found in App. I, pages 32 and 33:

> Paragraph 17(i)
>
> It appears from said charges, and said administrative decision, that the defendant acted arbitrarily, capriciously and from reason of bias or personal hatred and without warrant of law.
>
> **SPECIFICATION**
>
> 1. The Teacher Tenure Law states that the plaintiff may only be deprived of his contractural rights (continued contractural service) by the procedure provided by law. This is a substantial right (*Donahoo* v.

Board of Education, 413 Ill., 422). The procedural and, consequently, "due process" rights of the plaintiff were violated at least in the following respects.

a. The specification made above with respect to paragraph 17(i).

b. The failure to give the jurisdictional remedial notice.

c. The fact that findings were made against plaintiff that were not based on the charges.

d. The fact that findings were made against plaintiff that were not supported by substantial evidence.

2. The plaintiff was deprived of his salary (property) and his personal rights (to follow his chosen profession) by this denial of "due process."

3. It is not alleged in the charges that the best interests of the schools required that the plaintiff be dismissed and no evidence was introduced on the point. Such evidence would have to show that the schools were in some way damaged. Without such charges and evidence, there could be no basis for the specific finding in the decision that the best interests of the schools required that plaintiff be dismissed.

4. There is no presumption that the charges are true.

From this state of the pleadings, the teacher now argues that he raised the issue of the constitutional propriety of the board to act as a tribunal. An examination of the teacher's brief in the Illinois Supreme Court indicates this issue was not raised or argued to that court. Justice Schaefer's comments on this point cited no cases and were rendered more or less to support his statement that:

"The unseemliness, if not the unconstitutionality, of this procedure reinforces my doubt that the General Assembly intended that it should apply to the exercise of first amendment rights".

The charge of the Amicus Curiae of page 11 of his brief concerning the dual function of Mr. Louis Bertani as prosecutor and attorney for the board is completely false and unwarranted. Neither Justice Schaefer nor the majority of the Illinois Court discussed this point in their decisions. It was not raised in the teacher's brief to the Illinois Supreme Court. The teacher's brief in this court does not comment on this point as it relates to Mr. Bertani. The teacher was apparently satisfied in his hearing before the board and all the rulings in the admissions and exclusions of the evidence were proper since his complaint for administrative review failed to request a review on matters of admissions and exclusions of evidence.

Therefore it is requested that this issue not be considered by the Supreme Court of the United States in accordance with its ruling under the *Keyishian* case and the *Adler* case.

B. THE TEACHER WAS ACCORDED A FAIR HEARING.

The majority of the Illinois Supreme Court in its opinion discusses the purpose of the Illinois Teacher Tenure Law and the functions of the court on review: App. I, pages 143 and 144. The indication of the court is that the teacher was accorded a fair hearing. To quote the Illinois Supreme Court:

> "There is nothing in the record before us to indicate malice on the part of the board members toward the plaintiff, nor does it appear that the board's action was impulsive or capricious. The administration of the schools is within the domain of the school board, and courts do not interfere with the exercise of its powers unless it is shown to be capricious or arbitrary." App. I, page 44.

In sustaining the constitutionality of the State of New York Mental Hygiene Act which provided for the tempo-

rary restraint of alleged mentally incompetent persons without notice and hearing, the ultimate appeal court of the State of New York discussed and analyzed the requirement of due process.

Due process is not susceptible of precise legal definition. Due process of law requires an orderly proceedings *adapted to the nature of the case* in which the citizen has an opportunity to be heard and to defend, enforce and protect his rights. A hearing or an opporunity to be heard is absolutely essential. *In Re: Coates,* 9 N.Y. 2d 242, 173 N.E. 2d, 797. Due process does not, however, guarantee to the citizen of a state any particular form or method of state procedure, *Dohany* v. *Rogers,* 281 U.S. 362, at 369, 50 S. Ct. 299, (1930).

The Illinois pattern of administrative procedure provides for a hearing before the administrative board with review to the Circuit Court and review to the Appellate and Supreme Court. Complaints in many instances are initiated by the administrative agency on its own motion, then subsequently heard by the initiating board. Police and fire boards, liquor control boards, zoning boards, commerce commissions, licensing agencies insurance and banking control agencies, etc. . . . all follow a like procedure because these boards and agencies are adapted to the nature of the case.

Now, the teacher is demanding that the State of Illinois create a new hearing agency because the procedure afforded him might have been unfair.

It would be preposterous for a lawyer to release contemptuous public statements concerning the Supreme Court of Illinois and then argue that he should go without punishment because the State of Illinois has not provided him with an unbiased tribunal. It would be even more

preposterous if this court would declare chapter 122, section 24-12 unconstitutional before the Illinois Supreme Court had an opportunity to fully explore that issue in its own court.

The dismissal action of the defendant board in this case can be sustained on the false and misleading statements directed to the school superintendent who is not an elected official, App. I, page 66, nor a member of the board of education sitting as a hearing agency, App. I, pages 20 and 21. We conclude the teacher in this case was afforded a fair hearing.

CONCLUSION

1. That the statements of the teacher were false and misleading and were detrimental to the best interest of schools. That there was substantial evidence in the record to support the findings of the board of edueation and that the conduct of the teacher was without remedy.

2. That Chapter 122, Section 22.4 is not unconstitutionally vague and indefinite.

3. That the teacher was afforded a fair hearing. If the case is to be reversed on this point then there must be a remandment order for trial de novo in the Circuit Court of Will County, Illinois.

The judgment of the Illinois Supreme Court should be affirmed.

Respectfully submitted,

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SUPREME COURT, U. S.

FEB 13 1968

JOHN F. DAVIS, CLERK

No. 510

In the

Supreme Court of the United States

OCTOBER TERM, A.D. 1967.

MARVIN L. PICKERING,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Defendant-Appellee.

On Appeal From
The Supreme Court of Illinois

REPLY BRIEF OF PLAINTIFF-APPELLANT

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REPLY BRIEF OF PLAINTIFF-APPELLANT

Considered in the light of defendant's brief, plaintiff's arguments have not been seriously challenged.

I. PLAINTIFF WAS DISMISSED FROM HIS EMPLOYMENT AS A PUBLIC SCHOOL TEACHER BECAUSE HE EXERCISED HIS FIRST AMENDMENT RIGHT OF FREE SPEECH (Pl. Br. 12-16)

Whether plaintiff's letter was constitutionally protected or not, defendant's brief demonstrates that it alone and nothing else prompted his dismissal. Defendant acknowledges that the letter concerned school finance and other

school policies noting that raising money "is the most vital" of the board's activities (Def. Br. 13) and is a "paramount" responsibility of the board (Def. Br. 8). Defendant's lengthy expository statement about the operation of schools (Def. Br. 5-9) removes any doubt that the subjects of the letter were matters of public concern.

Defendant makes no reference to *New York Times* v. *Sullivan*, 376 U.S. 254 (1964) and related cases; nevertheless, it apparently wishes to avoid those cases because board of education members are public officials "only in the narrowest definition of the word elected" (Def. Br. 13) and because the superintendent is not "elected" (Def. Br. 22). That the board members and the superintendent are public officials within the scope of *New York Times* and subsequent cases can hardly be doubted. There is by statute only one general superintendent in a school district. Ill. Rev. Stat., Chap. 122, Sec. 10-22.4 recites some of his significant roles:

> The superintendent shall make recommendations to the board concerning the budget, building plants, the locations of sites, the selection of teachers and other employees, the selection of textbooks, instructional material and courses of study.

In the case at bar, the superintendent was probably the most important school official in the district. It is significant that the dismissal resolution referred to the superintendent and board members as "carrying out their official duties." (App. I, 10)

A review of defendant's brief leaves no other conclusion than that plaintiff's letter concerned public matters and public officials and that his dismissal, whether justifiable or not, was solely and exclusively based on statements which come within the scope of the first amendment's concern for free speech.

II. PUBLIC EMPLOYEES ARE ENTITLED TO FULL FIRST AMENDMENT RIGHTS (Pl. Br. 16-21)

Defendant effectively ignored this proposition. Instead defendant offered several loose and shifting standards which might be applied in free speech cases. Defendant refused to recognize that the selection of a proper standard depends in large measure upon the more fundamental question as to what constitutional rights public employees possess. Defendant's suggestion that a teacher's statements ought to be "responsible, intelligent, and factual" (Def. Br. 14) while having a certain persuasiveness cannot stand if teachers really have full first amendment rights as this Court said in *Garrity* v. *New Jersey,* 385 U.S. 493 (1967) and other cases. Instead such statements require judgment according to a rule similar to that used in *New York Times* v. *Sullivan,* 376 U.S. 254 (1964). This necessarily follows from our unchallenged proposition that public employees do have full first amendment rights.

III. DEFENDANT BOARD OF EDUCATION HAS ASSERTED NO OVERRIDING INTEREST WHICH MIGHT JUSTIFY A LIMITATION OF PLAINTIFF'S FIRST AMENDMENT RIGHTS (Pl. Br. 21-39)

Plaintiff's analysis (Pl. Br. 22) of the four areas of interest which according to the board's dismissal resolution, (App. I. 9-10) had been adversely affected by plaintiff's letter drew no response in defendant's brief. The "reputations" of the schools and the officials which played such a prominent role in that resolution have now so receded in importance that the term "reputation" nowhere appears in defendant's brief. Also unchallenged is plaintiff's analysis of the other interests which were supposedly affected adversely.

VI. PLAINTIFF'S STATEMENTS WERE SUBSTANTIALLY CORRECT. (Pl. Br. 55-67)

Plaintiff's analysis of the factual basis for the statements in his letter has prompted an answer by defendant which merely repeats the conclusions that the board had reached even before the hearing. Two members of the Illinois Supreme Court agreed that:

> "The falsity of the principal statements contained in plaintiff's letter was not established." (App. I, 147)

If reasonable men at this level disagree, defendant ought to do more than repeat in summary fashion the charges against plaintiff.

Defendant's own brief raises doubts about its ability to determine what is accurate or inaccurate. Its overreaction to the legitimate interpretation in the ACLU's brief of the role of board adviser is symptomatic of its basic approach. We also note the board's reference to a "union" (Def. Br. 10) and "negotiations" (Def. Br. 8) which may leave an incorrect impression. Defendant also displays a misunderstanding of school finances. At page 6 of its brief, it states:

> In order to control school finances, the General Assembly has established three basic funds; namely, the Educational Fund, Building Fund and Transportation Fund, providing by mandatory legislation amounts which high schools (any school district) could raise for those purposes. The said funds can be used only for the purposes intended and cannot be interchanged and cannot be commingled. Teachers' salaries are paid from the Educational Fund.

Defendant apparently intended to persuade the Court that such comments in plaintiff's letter as:

> "To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse." (App. I. 13)

could not possibly be true because financial policies affecting one fund could have no effect on any other fund. If this is true then the superintendent in his letter must have made a false statement or revealed a misdeed when he said:

> "8. The present .02 cent transportation rate is inadequate—we borrow from the education fund to make ends meet." (App. II, 38).

Actually, the Illinois School Code provides that if the transportation fund has insufficient funds the board can transfer money from the educational fund to the transportation fund. (Ill Rev. Stat. Chap. 122, Sec. 17-8) Other provisions allow the board a choice of funds as the source of revenue to pay certain expenses. Whether this selection or transfer is distinguishable from "interchange" we do not know, but the board has considerably more latitude in setting up its budget than defendant implies. Defendant also asserts that:

> "It is illegal, in Illinois, to accumulate tax money out of any of the basic funds mentioned." (App. I, 6)

Actually, Ill. Rev. Stat. Chap. 122, Sec. 17-5.1 allows such accumulation if the voters by referendum so elect. While this information may have no particular relevance to the issues in this case it again demonstrates an inability by the board to conform to the same standards it wishes to impose on plaintiff.

We submit that if the complexities of school finance are beyond the comprehension of the board, it should not be especially harsh upon a teacher who thinks there is some relationship between the various funds. We do not think a teacher should be held responsible for assuming that the superintendent meant "teachers' salaries" when he said "teachers' salaries" (App. II, 8). We submit that plaintiff

Instead the board has constructed a new set of interests and duties:

1. An "obligation of loyalty to support the generally accepted goals of education as established by the Board of Education and the State" (Def. Br. 4, 12, 14).

2. A duty to provide "intelligent cooperation" (Def. Br. 14).

3. A duty not to affect adversely "the proper and efficient education of the children of the district" (Def. Br. 12).

The board has not "established" any set of "generally accepted" goals of education, nor has the State of Illinois. The board has not identified which, if any, of these so called goals plaintiff did not support. We know of no "goal of education" which requires a teacher to support a tax increase proposal and if there was such a goal, the record does not disclose how plaintiff has failed in that regard. His letter was written and published immediately *after* the tax increase proposal had gone down to its second defeat; the record reveals no plans for a third. The idea that the letter might jeopardize a possible future tax vote appears unwarranted for in another connection the board sustained an objection "on the ground that what occurred after October 8, 1964 is not pertinent to the issue" (App. I, 90).

The "intelligent cooperation" which defendant now demands implies that there was a vehicle by which this could be accomplished. Defendant's reference to "the executive board of the union" (Def. Br. 10) and the school board being faced with "contract negotiations with teachers" (Def. Br. 8) lends credence to the idea that the teachers, including plaintiff, were represented by a union under a collective bargaining agreement. As a matter of fact, no organization represented teachers for purposes of collec-

tive bargaining; there were no negotiations; there was no agreement; there was no grievance procedure. There was no vehicle for "cooperation", intelligent or otherwise.

More significantly, the matters about which plaintiff wrote were not "grievances" for which plaintiff could obtain redress. Fiscal and architectural *policies* are matters for public debate. Even an orderly procedure for redress of grievances does not preclude public debate about such matters.

The board's "intelligent cooperation" hypothesis assumes that voters have a duty to pass tax proposals and must be protected from information which might lead them to refuse to discharge that duty (Def. Br. 12). This concept of the voter hardly comports with principles of representative government. The acceptance of defendant's premise would allow public school boards and other government officials to confront voters with a captive lobbying force supporting the goals those officials "generally accepted." There would, under defendant's scheme, be no need for the voters except to pay taxes.

The most appealing new interest which the board now presents is "the children of the district." The board in its charges and during the hearing mentioned no harm to Pickering's students.

We submit that even if plaintiff's relationship with students now was before the court, his public statements are entitled to be judged by constitutional standards. This case in no way involves "children." It involves adult citizens of a community engaged in political debate and should be judged accordingly.

We submit that the interests now asserted by defendant have made their appearance too late in these proceedings

to justify their consideration and that like the original "adversely affected interests" are at war with the facts and cannot justify limitation of plaintiff's right of free speech.

IV. PLAINTIFF WAS DISMISSED BY AUTHORITY OF A STATUTE WHICH IS UNCONSTITUTIONALLY VOID BECAUSE IT IS VAGUE (PL. BR. 39-47)

We have argued that the Illinois dismissal statute (Ill. Rev. Stat. Ch. 122, Sec. 10-22.4) contains no language limiting free speech and that likewise the board had no rule or regulation. This has drawn the response that the word "cause" is sufficient authority even though, as defendant acknowledges, it is a "silent" word. (Def. Br. 9)

The board cites no case which holds that "cause" is a word which properly limits first amendment rights. It seeks to avoid the thrust of this Court's requirements of precision, in those first amendment cases considering loyalty oaths, by asserting that such oaths bear no relationship "to a person's efficiency, competency or ability to carry out his teaching responsibilities" (Def. Br. 16). If defendant is correct, we fail to see how plaintiff's letter bears any greater relationship to his competency or ability to teach.

However, the loyalty oath cases are not distinguishable on this ground for as this Court apparently recognized in its January 22, 1968 *per curiam* upholding of *Knight* v. *Board of Regents*, 269 F. Supp. 339 (D.C.N.Y. 1967), a loyalty oath may have some relationship. We submit that whether first amendment rights are being affected by requirements of a loyalty oath, dismissal proceedings or any other manner, the limitation must be clear and precise. In the case at bar, there is a complete absence of any limitation.

Apparently recognizing a need to provide some standard by which plaintiff's letter can be measured, the board has now supplied a variety. It refers to the statements as "false or recklessly made" (Def. Br. 10), "untrue and misleading and detrimental to the best interests of education" (Def. Br. 10), "false statements knowingly or recklessly made" (Def. Br. 13), "a reckless, childish, inaccurate, irresponsible, pointless and incoherent publication by a teacher in opposition of legitimate board policy" (Def. Br. 14).

The board asserts that public statements ought to be "responsible, intelligent and factual" (Def. Br. 14) or should be made "factually and accurately, commensurate with his education and experience" (Def. Br. 10).

We are as unable to determine what defendant means by "intelligent," "responsible" or "recklessly made". We are also unable to determine by what logic he avoids the application of the standards set out in *New York Times* v. *Sullivan*, 376 U.S. 254 (1964). Assuming, however, that defendant's words mean something, they are without any authoritative support and more significantly had not even a latent existence in any statute, rule or regulation in effect when plaintiff wrote his letter. The only guide plaintiff had was the letter of September 18, 1964 signed "Your Board of Education and Administration" which itself could not meet the tests defendant suggests (App. II, 37-38).

We submit that our "Void for Vagueness" argument not only has not been answered but has been confirmed by defendant.

V. PLAINTIFF WAS DISMISSED UNDER A PROCEDURE WHICH VIOLATED HIS RIGHTS OF DUE PROCESS (Pl. Br. 47-54)

Defendant challenged this argument on the grounds that the procedure did not violate due process and the question was not properly raised below.

In the course of argument, defendant charged the *amicus curiae*, Illinois Division of the American Civil Liberties Union, with making a "completely false and unwarranted" statement regarding the dual function of Mr. Louis Bertani as prosecutor and attorney for the board at the hearing (Def. Br. 20). We submit that the comments of the *amicus* were justified. It is obvious that Mr. Bertani prosecuted the case and this, defendant duly noted. Attorneys for plaintiff also know that Mr. John Verklan acted as board adviser, but this is not reflected in the record and in fact it appears that the *amicus* was justified in relying on the following matter at the start of the hearing:

> "Mr. Louis Bertani is present and will act as legal adviser for the Board of Education" (App. I, 39).

We suggest that this is but one aspect of a more basic defect. The board was both adversary and judge. As we pointed out in our first brief the adversary role of the board in this case is not merely nominal. The board was vindicating its reputation and that of its members. We submit that this procedure is fundamentally unfair.

We further note that the cases cited by defendant that litigants do not have a right to a particular procedure are not relevant because they did not involve government agencies which were both judge and adversary of a litigant.

Nor do we agree that this is a new issue interjected at the last minute. The complaint in the Circuit Court of Will County challenged both the procedure and the free speech question. Paragraph 17(1) of the complaint questioned the procedure and paragraph 17(m) addressed the free speech question (App. I, 7). In a further specification of Paragraph (1) plaintiff incorporated matters which were already part of a specification of Paragraph (i):

> "It is clear that the allegations in the charges . . . are personal reactions to the letter written by the plaintiff.
> a. . . .
> d. If the charges or the decision (or both) are made capriciously, it is inferreable that they were made in anger or hatred and from reasons of bias."

Defendant (Def. Br. 18, 19) quoted material from the specifications for paragraph (1) but failed to incorporate therein the above language. (We might add that we are uncertain as to what defendant was referring because he states he is quoting from the specifications of paragraph 17(i) but he actually set out material that was a part of the specifications of paragraph 17(1).) In any event, the matter has been considered below, the Illinois Supreme Court noted that the plaintiff had a fair hearing and the dissent disputed that point.

Whether or not the procedure below was fair or unfair, whether or not the question was properly raised, and whether or not it was considered by the Court, plaintiff still insists that his letter, being within the purview of the first amendment was entitled, should have been judged upon an independent determination by a reviewing court. We submit that the rule of *Jacobellis* v. *Ohio,* 378 U.S. 184 (1964) required this. If *Jacobellis* had been followed plaintiff's rights would have been protected, even though the hearing itself was unfair.

should not be held responsible for not knowing that the superintendent had left out a further definition of teachers so as to include "counsellors, principals and their assistants, their secretaries . . . also contingency." (App. I, 69)

The failure of the board to respond to our review of the facts and its own inaccurate exposition of the Illinois School Code leaves plaintiffs Point VI unchallenged and also reinforces our contention that no judge can properly judge his own case. This is the constitutional fallacy of the Illinois dismissal procedure.

CONCLUSION

We submit that defendant has, in the main, not responded to plaintiff's arguments and that where it has responded, its arguments only confirm plaintiff's position.

Considering plaintiff's original brief and argument in the light of defendant's random attack, we submit that on the facts and on constitutional principles, plaintiff's initial venture into public debate should not have been made his last.

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SUPREME COURT OF THE UNITED STATES

No. 510.—October Term, 1967.

Marvin L. Pickering, Appellant, v. Board of Education of Township High School District 205, Will County, Illinois.	On Appeal From the Supreme Court of Illinois.

[June 3, 1968.]

Mr. Justice Marshall delivered the opinion of the Court.

Appellant Marvin L. Pickering, a teacher in Township High School District 205, Will County, Illinois, was dismissed from his position by the appellee Board of Education for sending a letter to a local newspaper in connection with a recently proposed tax increase that was critical of the way in which the Board and the district superintendent of schools had handled past proposals to raise new revenue for the schools. Appellant's dismissal resulted from a determination by the Board, after a full hearing, that the publication of the letter was "detrimental to the efficient operation and administration of the schools of the district" and hence, under the relevant Illinois statute, Ill. Rev. Stat. 1963, c. 122, § 10–22.4, that "interests of the school require[d] [his dismissal]."

Appellant's claim that his writing of the letter was protected by the First and Fourteenth Amendments was rejected. Appellant then sought review of the Board's action in the Circuit Court of Will County, which affirmed his dismissal on the ground that the determination that appellant's letter was detrimentral to the interests of the school system was supported by substantial evidence and that the interests of the schools overrode appellant's First Amendment rights. On appeal, the Supreme Court of

Illinois, two Justices dissenting, affirmed the judgment of the Circuit Court. 36 Ill. 2d 568, 225 N. E. 2d 1 (1966). We noted probable jurisdiction of appellant's claim that the Illinois statute permitting his dismissal on the facts of this case was unconstitutional as applied under the First and Fourteenth Amendments.[1] 389 U. S. 925 (1967). For the reasons detailed below we agree that appellant's rights to freedom of speech were violated and we reverse.

I.

In February of 1961 the appellee Board of Education asked the voters of the school district to approve a bond issue to raise $4,875,000 to erect two new schools. The proposal was defeated. Then, in December of 1961, the Board submitted another bond proposal to the voters which called for the raising of $5,500,000 to build two new schools. This second proposal passed and the schools were built with the money raised by the bond sales. In May of 1964 a proposed increase in the tax rate to be used for educational purposes was submitted to the voters by the Board and was defeated. Finally, on September 19, 1964, a second proposal to increase the tax rate was submitted by the Board and was likewise defeated. It was in connection with this last proposal of the School Board that appellant wrote the letter to the editor (which we reproduce in an Appendix to this opinion) that resulted in his dismissal.

Prior to the vote on the second tax increase proposal a variety of articles attributed to the District 205 Teachers' Organization appeared in the local paper.

[1] Appellant also challenged the statutory standard on which the Board based his dismissal as vague and overbroad. See *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967); *NAACP* v. *Button*, 371 U. S. 415 (1963); *Shelton* v. *Tucker*, 364 U. S. 479 (1960). Because of our disposition of this case we do not reach appellant's challenge to the statute on its face.

These articles urged passage of the tax increase and stated that failure to pass the increase would result in a decline in the quality of education afforded children in the district's schools. A letter from the superintendent of schools making the same point was published in the paper two days before the election and submitted to the voters in mimeographed form the following day. It was in response to the foregoing material, together with the failure of the tax increase to pass, that appellant submitted the letter in question to the editor of the local paper.

The letter constituted, basically, an attack on the school board's handling of the 1961 bond issue proposals and its subsequent allocation of financial resources between the schools' educational and athletic programs. It also charged the superintendent of schools with attempting to prevent teachers in the district from opposing or criticizing the proposed bond issue.

The Board dismissed Pickering for writing and publishing the letter. Pursuant to Illinois law, the Board was then required to hold a hearing on the dismissal. At the hearing the Board charged that numerous statements in the letter were false and that the publication of the statements unjustifiably impugned the "motives, honesty, integrity, truthfulness, responsibility and competence" of both the Board and the school administration. The Board also charged that the false statements damaged the professional reputations of its members and of the school administrators, would be disruptive of faculty discipline, and would tend to foment "controversy, conflict and dissension" among teachers, administrators, the Board of Education, and the residents of the district. Testimony was introduced from a variety of witnesses on the truth or falsity of the particular statements in the letter with which the Board took issue. The Board found the statements to be false as charged. No

evidence was introduced at any point in the proceedings as to the effect of the publication of the letter on the community as a whole or on the administration of the school system in particular, and no specific findings along these lines were made.

The Illinois courts reviewed the proceedings solely to determine whether the Board's findings were supported by substantial evidence and whether, on the facts as found, the Board could reasonably conclude that appellant's publication of the letter was "detrimental to the best interests of the schools." Pickering's claim that his letter was protected by the First Amendment was rejected on the ground that his acceptance of a teaching position in the public schools obliged him to refrain from making statements about the operation of the schools "which in the absence of such position he would have an undoubted right to engage in." It is not altogether clear whether the Illinois Supreme Court held that the First Amendment had no applicability to appellant's dismissal for writing the letter in question or whether it determined that the particular statements made in the letter were not entitled to First Amendment protection. In any event, it clearly rejected Pickering's claim that, on the facts of this case, he could not constitutionally be dismissed from his teaching position.

II.

To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court. *E. g., Wieman* v. *Updegraff*, 344 U. S. 183 (1952); *Shelton* v. *Tucker*,

364 U. S. 479 (1960); *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967). "[T]he theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." *Keyishian* v. *Board of Regents, supra,* at 605–606. At the same time it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.

III.

The Board contends that "the teacher by virtue of his public employment has a duty of loyalty to support his superiors in attaining the generally accepted goals of education and that, if he must speak out publicly, he should do so factually and accurately, commensurate with his education and experience." Appellant, on the other hand, argues that the test applicable to defamatory statements directed against public officials by persons having no occupational relationship with them, namely, that statements to be legally actionable must be made "with knowledge that [they were] . . . false or with reckless disregard of whether [they were] . . . false or not," *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 280 (1964), should also be applied to public statements made by teachers. Because of the enormous variety of fact situations in which critical statements by teachers and other public employees may be thought by their superiors, against whom the statements are directed, to furnish grounds for dismissal, we do not deem it either appro-

priate or feasible to attempt to lay down a general standard against which all such statements may be judged. However, in the course of evaluating the conflicting claims of First Amendment protection and the need for orderly school administration in the context of this case, we shall indicate some of the general lines along which an analysis of the controlling interests should run.

An examination of the statements in appellant's letter objected to by the Board [2] reveals that they, like the letter as a whole, consist essentially of criticism of the Board's allocation of school funds between educational and athletic programs, and of both the Board's and the superintendent's methods of informing, or preventing the informing of, the district's taxpayers of the real reasons why additional tax revenues were being sought for the schools. The statements are in no way directed towards any person with whom appellant would normally be in contact in the course of his daily work as a teacher. Thus no question of maintaining either discipline by immediate superiors or harmony among coworkers is presented here. Appellant's employment relationships with the Board and, to a somewhat lesser extent, with the superintendent are not the kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary to their proper functioning. Accordingly, to the extent that the Board's position here can be taken to suggest that even comments on matters of public concern that are substantially correct, such as statements (1)–(4) of appellant's letter, see Appendix, *infra*, may furnish grounds for

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[2] We have set out in the Appendix our detailed analysis of the specific statements in appellant's letter which the Board found to be false, together with our reasons for concluding that several of the statements were, contrary to the findings of the Board, substantially correct.

dismissal if they are sufficiently critical in tone, we unequivocally reject it.[3]

We next consider the statements in appellant's letter which we agree to be false. The Board's original charges included allegations that the publication of the letter damaged the professional reputations of the Board and the superintendent and would foment controversy and conflict among the Board, teachers, administrators, and the residents of the district. However, no evidence to support these allegations was introduced at the hearing. So far as the record reveals, Pickering's letter was greeted by everyone but its main target, the Board, with massive apathy and total disbelief. The Board must, therefore, have decided, perhaps by analogy with the law of libel, that the statements were *per se* harmful to the operation of the schools.

However, the only way in which the Board could conclude, absent any evidence of the actual effect of the letter, that the statements contained therein were *per se* detrimental to the interest of the schools was to equate the Board members' own interests with that of the schools. Certainly an accusation that too much money is being spent on athletics by the administrators of the school system (which is precisely the import of that portion of appellant's letter containing the statements that we have found to be false, see Appendix, *infra*)

[3] It is possible to conceive of some positions in public employment in which the need for confidentiality is so great that even completely correct public statements might furnish a permissible ground for dismissal. Likewise, positions in public employment in which the relationship between superior and subordinate is of such a personal and intimate nature that certain forms of public criticism of the superior by the subordinate would seriously undermine the effectiveness of the working relationship between them can also be imagined. We intimate no views as to how we would resolve any specific instances of such situations, but merely note that significantly different considerations would be involved in such cases.

cannot reasonably be regarded as *per se* detrimental to the district's schools. Such an accusation reflects rather a difference of opinion between Pickering and the Board as to the preferable manner of operating the school system, a difference of opinion that clearly concerns an issue of general public interest.

In addition, the fact that particular illustrations of the Board's claimed undesirable emphasis on athletic programs are false would not normally have any necessary impact on the actual operation of the schools, beyond its tendency to anger the Board. For example, Pickering's letter was written after the defeat at the polls of the second proposed tax increase. It could, therefore, have had no effect on the ability of the school district to raise necessary revenue, since there was no showing that there was any proposal to increase taxes pending when the letter was written.

More importantly, the question whether a school system requires additional funds is a matter of legitimate public concern on which the judgment of the school administration, including the School Board, cannot, in a society that leaves such questions to popular vote, be taken as conclusive. On such a question free and open debate is vital to informed decision-making by the electorate. Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal.

In addition, the amounts expended on athletics which Pickering reported erroneously were matters of public record on which his position as a teacher in the district did not qualify him to speak with any greater authority than any other taxpayer. The Board could easily have rebutted appellant's errors by publishing the accurate

figures itself, either via a letter to the same newspaper or otherwise. We are thus not presented with a situation in which a teacher has carelessly made false statements about matters so closely related to the day-to-day operations of the schools that any harmful impact on the public would be difficult to counter because of the teacher's presumed greater access to the real facts. Accordingly, we have no occasion to consider at this time whether under such circumstances a school board could reasonably require that a teacher make substantial efforts to verify the accuracy of his charges before publishing them.[4]

What we do have before us is a case in which a teacher has made erroneous public statements upon issues then currently the subject of public attention, which are critical of his ultimate employer but which are neither shown nor can be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom[5] or to have interfered with the regular operation of the schools generally. In these circumstances we conclude that the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public.

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[4] There is likewise no occasion furnished by this case for consideration of the extent to which teachers can be required by narrowly drawn grievance procedures to submit complaints about the operation of the schools to their superiors for action thereon prior to bringing the complaints before the public.

[5] We also note that this case does not present a situation in which a teacher's public statements are so without foundation as to call into question his fitness to perform his duties in the classroom. In such a case, of course, the statements would merely be evidence of the teacher's general competence, or lack thereof, and not an independent basis for dismissal.

IV.

The public interest in having free and unhindered debate on matters of public importance—the core value of the Free Speech Clause of the First Amendment—is so great that it has been held that a State cannot authorize the recovery of damages by a public official for defamatory statements directed at him except when such statements are shown to have been made either with knowledge of their falsity or with reckless disregard for their truth or falsity. *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964); *St. Amant* v. *Thompson*, — U. S. — (1968). Compare *Linn* v. *United Plant Guard Workers*, 383 U. S. 53 (1966). The same test has been applied to suits for invasion of privacy based on false statements where a "matter of public interest" is involved. *Time, Inc.* v. *Hill*, 385 U. S. 374 (1967). It is therefore perfectly clear that, were appellant a member of the general public, the State's power to afford the appellee Board of Education or its members any legal right to sue him for writing the letter at issue here would be limited by the requirement that the letter be judged by the standard laid down in *New York Times*.

This Court has also indicated, in more general terms, that statements by public officials on matters of public concern must be accorded First Amendment protection despite the fact that the statements are directed at their nominal superiors. *Garrison* v. *Louisiana*, 379 U. S. 64 (1964); *Wood* v. *Georgia*, 370 U. S. 375 (1962). In *Garrison*, the *New York Times* test was specifically applied to a case involving a criminal defamation conviction stemming from statements made by a district attorney about the judges before whom he regularly appeared.

While criminal sanctions and damage awards have a somewhat different impact on the exercise of the right to freedom of speech from dismissal from employment, it is apparent that the threat of dismissal from public employ-

ment is nonetheless a potent means of inhibiting speech. We have already noted our disinclination to make an across-the-board equation of dismissal from public employment for remarks critical of superiors with awarding damages in a libel suit by a public official for similar criticism. However, in a case such as the present one, in which the fact of employment is only tangentially and insubstantially involved in the subject matter of the public communication made by a teacher, we conclude that it is necessary to regard the teacher as the member of the general public he seeks to be.

In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him,[6] a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment. Since no such showing has been made in this case regarding appellant's letter, see Appendix, *infra*, his dismissal for writing it cannot be upheld and the judgment of the Illinois Supreme Court must, accordingly, be reversed and the case remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK joins, concurs in the judgment of the Court for the reasons set out in his concurring opinions in *Time, Inc.* v. *Hill*, 385 U. S. 374, 401, *Rosenblatt* v. *Baer*, 383 U. S. 75, 88, and *Garrison* v. *Louisiana*, 379 U. S. 64, 80, and in the concurring opinions of MR. JUSTICE BLACK in *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130, 170, and *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 293.

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[6] Because we conclude that appellant's statements were not knowingly or recklessly false, we have no occasion to pass upon the additional question whether a statement that was knowingly or recklessly false would, if it were neither shown nor could reasonably be presumed to have had any harmful effects, still be protected by the First Amendment. See also n. 5, *supra*.

APPENDIX.

A. *Appellant's letter.*

LETTERS TO THE EDITOR

**** Graphic Newspapers, Inc.
Thursday, September 24, 1964, Page 4

Dear Editor:

I enjoyed reading the back issues of your paper which you loaned to me. Perhaps others would enjoy reading them in order to see just how far the two new high schools have deviated from the original promises by the Board of Education. First, let me state that I am referring to the February thru November, 1961 issues of your paper, so that it can be checked.

One statement in your paper declared that swimming pools, athletic fields, and auditoriums had been left out of the program. They may have been left out but they got put back in very quickly because Lockport West has both an auditorium and athletic field. In fact, Lockport West has a better athletic field than Lockport Central. It has a track that isn't quite regulation distance even though the board spent a few thousand dollars on it. Whose fault is that? Oh, I forgot, it wasn't supposed to be there in the first place. It must have fallen out of the sky. Such responsibility has been touched on in other letters but it seems one just can't help noticing it. I am not saying the school shouldn't have these facilities, because I think they should, but promises are promises, or are they?

Since there seems to be a problem getting all the facts to the voter on the twice defeated bond issue, many letters have been written to this paper and probably more will follow, I feel I must say something about the letters and their writers. Many of these letters did not give the whole story. Letters by your Board and Administration have stated that teachers' salaries total

$1,297,746 for one year. Now that must have been the total payroll, otherwise the teachers would be getting $10,000 a year. I teach at the high school and I know this just isn't the case. However, this shows their "stop at nothing" attitude. To illustrate further, do you know that the superintendent told the teachers, and I quote, "Any teacher that opposes the referendum should be prepared for the consequences." I think this gets at the reason we have problems passing bond issues. Threats take something away; these are insults to voters in a free society. We should try to sell a program on its merits, if it has any.

Remember those letters entitled "District 205 Teachers Speak," I think the voters should know that those letters have been written and agreed to by only five or six teachers, not 98% of the teachers in the high school. In fact, many teachers didn't even know who was writing them. Did you know that those letters had to have the approval of the superintendent before they could be put in the paper? That's the kind of totalitarianism teachers live in at the high school, and your children go to school in.

In last week's paper, the letter written by a few uninformed teachers threatened to close the school cafeteria and fire its personnel. This is ridiculous and insults the intelligence of the voter because properly managed school cafeterias do not cost the school district any money. If the cafeteria is losing money, then the board should not be packing free lunches for athletes on days of athletic contests. Whatever the case, the taxpayer's child should only have to pay about 30¢ for his lunch instead of 35¢ to pay for free lunches for the athletes.

In a reply to this letter your Board of Administration will probably state that these lunches are paid for from receipts from the games. But $20,000 in receipts doesn't pay for the $200,000 a year they have been spending on varsity sports while neglecting the wants of teachers.

You see we don't need an increase in the transportation tax unless the voters want to keep paying $50,000 or more a year to transport athletes home after practice and to away games, etc. Rest of the $200,000 is made up in coaches' salaries, athletic directors' salaries, baseball pitching machines, sodded football fields, and thousands of dollars for other sports equipment.

These things are all right, provided we have enough money for them. To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse.

If these things aren't enough for you, look at East High. No doors on many of the classrooms, a plant room without any sunlight, no water in a first aid treatment room, are just a few of many things. The taxpayers were really taken to the cleaners. A part of the sidewalk in front of the building has already collapsed. Maybe Mr. Hess would be interested to know that we need blinds on the windows in that building also.

Once again, the board must have forgotten they were going to spend $3,200,000 on the West building and $2,300,000 on the East building.

As I see it, the bond issue is a fight between the Board of Education that is trying to push tax-supported athletics down our throats with education, and a public that has mixed emotions about both of these items because they feel they are already paying enough taxes, and simply don't know whom to trust with any more tax money.

I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration. Do you really know what goes on behind those stone walls at the high school?

Respectfully,

Marvin L. Pickering.

B. *Analysis.*

The foregoing letter contains eight principal statements which the Board found to be false.[1] Our independent review of the record [2] convinces us that Justice

[1] We shall not bother to enumerate some of the statements which the Board found to be false because their triviality is so readily apparent that the Board could not rationally have considered them as detrimental to the interests of the schools regardless of their truth or falsity.

[2] This Court has regularly held that where constitutional rights are in issue an independent examination of the record will be made in order that the controlling legal principles may be applied to the actual facts of the case. *E. g., Norris* v. *Alabama,* 294 U. S. 587 (1935); *Pennekamp* v. *Florida,* 328 U. S. 331 (1946); *New York Times* v. *Sullivan,* 376 U. S. 254, 285 (1964). However, even in cases where the upholding or rejection of a constitutional claim turns on the resolution of factual questions, we also consistently give great, if not controlling, weight to the findings of the state courts. In the present case the trier of fact was the same body that was also both the victim of appellant's statements and the prosecutor that brought the charges aimed at securing his dismissal. The state courts made no independent review of the record but simply contented themselves with ascertaining, in accordance with statute, whether there was substantial evidence to support the Board's findings.

Appellant requests us to reverse the state courts' decisions upholding his dismissal on the independent ground that the procedure followed above deprived him of due process in that he was not afforded an impartial tribunal. However, appellant makes this contention for the first time in this Court, not having raised it at any point in the state proceedings. Because of this, we decline to treat appellant's claim as an independent ground for our decision in this case. On the other hand, we do not propose to blind ourselves to the obvious defects in the fact-finding process occasioned by the Board's multiple functioning *vis-à-vis* appellant. Compare *Tumey* v. *Ohio,* 273 U. S. 510 (1927); *In re Murchison,* 349 U. S. 133 (1955). Accordingly, since the state courts have at no time given *de novo* consideration to the statements in the letter, we feel free to examine the evidence in this case completely independently and to afford little weight to the factual determinations made by the Board.

Schaefer was correct in his dissenting opinion in this case when he concluded that many of appellant's statements which were found by the Board to be false were in fact substantially correct. We shall deal with each of the statements found to be false in turn. (1) Appellant asserted in his letter that the two new high schools when constructed deviated substantially from the original promises made by the Board during the campaign on the bond issue about the factilities they would contain. The Board based its conclusion that this statement was false on its determination that the promises referred to were those made in the campaign to pass the second bond issue in December of 1961. In the campaign on the first bond issue the Board stated that the plans for the two schools did not include such items as swimming pools, auditoriums, and athletic fields. The publicity put out by the Board on the second bond issue mentioned nothing about the addition of an auditorium to the plans and also mentioned nothing specific about athletic fields, although a general reference to "state required physical education facilities" was included that was similar to a reference made in the material issued by the Board during the first campaign.

In sum, the Board first stated that certain facilities were not to be included in the new high schools as an economy measure, changed its mind after the defeat of the first bond issue and decided to include some of the facilities previously omitted, and never specifically or even generally indicated to the taxpayers the change. Appellant's claim that the original plans, as disclosed to the public, deviated from the buildings actually constructed is thus substantially correct and his characterization of the Board's prior statement as a "promise" is fair as a matter of opinion. The Board's conclusion to the contrary based on its determination that appellant's statement referred only to the literature distributed

during the second bond issue campaign is unreasonable in that it ignores the word "original" that modifies "promises" in appellant's letter.

(2) Appellant stated that the Board incorrectly informed the public that "teachers' salaries" total $1,297,746 per year. The Board found that statement false. However, the superintendent of schools admitted that the only way the Board's figure could be regarded as accurate was to change the word "teachers" to "instructional" whereby the salaries of deans, principals, librarians, counselors, and four secretaries at each of the district's three high schools would be included in the total. Appellant's characterization of the Board's figure as incorrect is thus clearly accurate.

(3) Pickering claimed that the superintendent had said that any teacher who did not support the 1961 bond issue referendum should be prepared for the consequences. The Board found this claim false. However, the statement was corroborated by the testimony of two other teachers, although the superintendent denied making the remark attributed to him. The Illinois Supreme Court appears to have agreed that something along the lines stated by appellant was said, since it relied, in upholding the Board's finding that appellant's version of the remark was false, on testimony by one of the two teachers that he interpreted the remark to be a prediction about the adverse consequences for the schools should the referendum not pass rather than a threat against noncooperation by teachers. However, the other teacher testified that he didn't know how to interpret the remark. Accordingly, while appellant may have misinterpreted the meaning of the remark, he did not misreport it.

(4) Appellant's letter stated that letters from teachers to newspapers had to have the approval of the superintendent before they could be submitted for publication. The Board relied in finding this statement false on the

testimony by the superintendent that no approval was required by him. However, the Handbook for Teachers of the district specifically stated at that time that material submitted to local papers should be checked with the building principal and submitted in triplicate to the publicity coordinator. In particular, the teachers' letters to which appellant was specifically referring in his own letter had in fact been submitted to the superintendent prior to their publication. Thus this statement is substantially correct.

The other four statements challenged by the Board, are factually incorrect in varying degrees. (5) Appellant's letter implied that providing athletes in the schools with free lunches meant that other students must pay 35¢ instead of 30¢ for their lunches. This statement is erroneous in that while discontinuing free lunches for athletes would have permitted some small decrease in the 35¢ charge for lunch to other students, the decrease would not have brought the price down to 30¢. (6) Appellant claimed that the Board had been spending $200,000 a year on athletics while neglecting the wants of teachers. This claim is incorrect in that the $200,000 per year figure included over $130,000 of nonrecurring capital expenditures. (7) Appellant also claimed that the Board had been spending $50,000 a year on transportation for athletes. This claim is completely false in that the expenditures on travel for athletes per year were about $10,000. (8) Finally, appellant stated that football fields had been sodded on borrowed money, while the Board had been unable to pay teachers' salaries. This statement is substantially correct as to the football fields being sodded with borrowed money because the money spent was the proceeds of part of the bond issue, which can fairly be characterized as borrowed. It is incorrect insofar as it suggests that the district's teachers had actually not been paid upon occasion, but correct if

taken to mean that the Board had at times some difficulty in obtaining the funds with which to pay teachers. The manner in which the last four statements are false is perfectly consistent with good-faith error, and there is no evidence in the record to show that anything other than carelessness or insufficient information was responsible for their being made.

SUPREME COURT OF THE UNITED STATES

No. 510.—October Term, 1967.

Marvin L. Pickering, Appellant, *v.* Board of Education of Township High School District 205, Will County, Illinois.	On Appeal From the Supreme Court of Illinois.

[June 3, 1968.]

Mr. Justice White, concurring in part and dissenting in part.

The Court holds that truthful statements by a school teacher critical of the school board are within the ambit of the First Amendment. So also are false statements innocently or negligently made. The State may not fire the teacher for making either unless, as I gather it, there are special circumstances, not present in this case, demonstrating an overriding state interest, such as the need for confidentiality or the special obligations which a teacher in a particular position may owe to his superiors.[1] The core of today's decision is the holding that Pickering's discharge must be tested by the standard of *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964). To this extent I am in agreement.

[1] See *ante*, at 6–7, 9 and nn. 3, 4. The Court does not elaborate upon its suggestion that there may be situations in which, with reference to certain areas of public comment, a teacher may have special obligations to his superiors. It simply holds that in this case, with respect to the particular public comment made by Pickering, he is more like a member of the general public and, apparently, too remote from the school board to require placing him into any special category. Further, as I read the Court's opinion, it does not foreclose the possibility that under the First Amendment a school system may have an enforceable rule, applicable to teachers, that public statements about school business must first be submitted to the authorities to check for accuracy.

The Court goes on, however, to reopen a question I had thought settled by *New York Times* and the cases that followed it, particularly *Garrison* v. *Louisiana*, 379 U. S. 64 (1964). The Court devotes several pages to re-examining the facts in order to reject the determination below that Pickering's statements harmed the school system, *ante*, at 7–9, when the question of harm is clearly irrelevant given the Court's determination that Pickering's statements were neither knowingly nor recklessly false and its ruling that in such circumstances a teacher may not be fired even if the statements are injurious. The Court then gratuitously suggests that when statements are found to be knowingly or recklessly false, it is an open question whether the First Amendment still protects them unless they are shown or can be presumed to have caused harm. *Ante*, at 11, n. 6. Deliberate or reckless falsehoods serve no First Amendment ends and deserve no protection under that Amendment. The Court unequivocally recognized this in *Garrison*, where after reargument the Court said that "the knowingly false statement and the statement made with reckless disregard of the truth, do not enjoy constitutional protection." 379 U. S., at 75. The Court today neither explains nor justifies its withdrawal from the firm stand taken in *Garrison*. As I see it, a teacher may be fired without violation of the First Amendment for knowingly or recklessly making false statements regardless of their harmful impact on the schools. As the Court holds, however, in the absence of special circumstances he may not be fired if his statements were true or only negligently false, even if there is some harm to the school system. I therefore see no basis or necessity for the Court's foray into factfinding with respect to whether the record supports a finding as to injury.[2] If Pickering's false state-

[2] Even if consideration of harm were necessary in this case, I could not join the Court in concluding on this record that harm to the school administration was not proved and could not be presumed.

ments were either knowingly or recklessly made, injury to the school system becomes irrelevant, and the First Amendment would not prevent his discharge. For the State to be constitutionally precluded from terminating his employment, reliance on some other constitutional provision would be required.

Nor can I join the Court in its findings with regard to whether Pickering knowingly or recklessly published false statements. Neither the State in presenting its evidence nor the state tribunals in arriving at their findings and conclusions of law addressed themselves to the elements of the new standard which the Court holds the First Amendment to require in the circumstances of this case. Indeed, the state courts expressly rejected the applicability of both *New York Times* and *Garrison*. I find it wholly unsatisfactory for this Court to make the initial determination of knowing or reckless falsehood from the cold record now before us. It would be far more appropriate to remand this case to the state courts for further proceedings in light of the constitutional standard which the Court deems applicable to this case, once the relevant facts have been ascertained in appropriate proceedings.